No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME I

Pages 1 to 471

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States Circuit Court of Appeals
for the Ninth Circuit

No. .....

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

CERTIFICATE OF TRANSCRIPT OF RECORD

Pursuant to the provisions of Section 24(a) of the Public Utility Holding Company Act of 1935,

I, Francis P. Brassor, Secretary of the Securities and Exchange Commission, do hereby certify that the annexed volumes numbered I to VI, inclusive, constitute the transcript of the record of the proceedings had before the Securities and Exchange Commission in the matter of Pacific Gas and Electric Company, Great Western Power Company of California, upon which the order complained of in the above entitled matter was entered.

In witness whereof I have hereunto set my hand and caused to be affixed the seal of the Securities and Exchange Commission at its office in the City of Washington, District of Columbia, this 20th day of October, 1941.

(Seal) FRANCIS P. BRASSOR
Secretary

Original

SECURITIES AND EXCHANGE COMMISSION

Washington, D. C.
Public Utility Holding Company Act of 1935

Application of
PACIFIC GAS AND ELECTRIC COMPANY

For Exemption of Itself and Its Subsidiaries

Securities and Exchange Commission
Washington, D. C.

Public Utility Holding Company Act of 1935

APPLICATION OF
PACIFIC GAS AND ELECTRIC COMPANY AND GREAT WESTERN POWER COMPANY OF CALIFORNIA (A SUBSIDIARY OF PACIFIC GAS AND ELECTRIC COMPANY)

(A) For An Order, Under Section 3(a), Subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, Exempting Them and All of Their Subsidiaries From the Provisions of Said Act, and

(B) For An Order, Under Section 2(a), Subdivision (8), of Said Act Declaring That Neither Said Pacific Gas and Electric Company Nor Any of Its Subsidiary Companies Is a Subsidiary of the North American Company.

PRELIMINARY STATEMENT

The applicants herein, Pacific Gas and Electric Company and Great Western Power Company of California, respectfully submit the following preliminary statement:

A.

Pacific Gas and Electric Company is a corporation duly organized and existing under the laws of the State of California, and has its office and principal place of business in the City and County of San Francisco, in said state.

Pacific Gas and Electric Company is a public utility company which owns and operates facilities used for the generation, transmission and distribution of electric energy for sale at wholesale and retail, and also facilities used for the generation of gas, and for the transmission and distribution of both natural and manufactured gas for sale at retail for light and heat.

Pacific Gas and Electric Company owns and controls all voting securities (i. e., all issued shares of stock) of

Mt. Shasta Power Corporation,
Sierra and San Francisco Power Company,
Modesto Gas Company, and
Midland Counties Public Service Corporation;

more than ninety-nine per cent of the voting securities (i. e., issued shares of stock) of

Great Western Power Company of California; and

and more than eighty-nine per cent of all voting securities (i. e., issued shares of stock) of

San Joaquin Light and Power Corporation.

B.

Great Western Power Company of California is a corporation organized and existing under and by virtue of the laws of the State of California, and has its office and principal place of business in said City and County of San Francisco.

Great Western Power Company of California is a public utility company which owns and operates facilities used for the generation, transmission and distribution of electric energy for sale at wholesale and retail.

Great Western Power Company of California owns and controls all voting securities (i. e., all issued shares of stock) of

Napa Valley Electric Company,
Feather River Power Company, and
Great Western Power Company; and

two-thirds of all voting securities (i. e., issued shares of stock) of

California Electric Generating Company.

C.

Each of the companies hereinbefore mentioned is a corporation organized and existing under the laws of the State of California and is a public utility company owning or operating facilities used for the generation, transmission or distribution of electric energy or natural or manufactured gas for sale to the public. Applicants have no other public utility subsidiary company.

D.

All of the utility assets owned or operated by the aforesaid companies, for the generation, transmission, distribution and sale of electric energy, are physically interconnected and may be, and in fact are, economically operated as a single interconnected and coordinated system confined in its operations to a single area in the State of California, and constitute an integrated public utility system. Said system is not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California.

All of the utility assets owned or operated by all of the aforesaid companies, for the generation, transmission, distribution and sale of natural and

manufactured gas, are so located and related that substantial economies may be, and in fact are, effectuated by being operated as a single coordinated system confined in its operations to a single area or region in the State of California, not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California, and constitute an integrated public utility system. By far the greater part of the gas distributed and sold by said companies is natural gas obtained from a common source in the State of California and transmitted by main pipe lines to the principal centers of distribution in said state.

E.

Said Pacific Gas and Electric Company and said Great Western Power Company of California and every subsidiary company of each of them which is a public utility company are completely intrastate in character and carry on and conduct public utility business exclusively in the State of California, in which all of said companies are incorporated.

Said Pacific Gas and Electric Company is predominantly a public utility company, and its public utility operations do not extend beyond the State of California.

Great Western Power Company of California is also predominantly a public utility company and

its public utility operations do not extend beyond the State of California.

F.

Said Pacific Gas and Electric Company is not a subsidiary company of any holding company within the meaning of that term as defined in said Act. None of the other companies hereinbefore mentioned is a subsidiary company of any holding company except Pacific Gas and Electric Company or said Great Western Power Company of California.

No person or company, except as hereinbefore stated, directly or indirectly, owns or controls or holds with power to vote as much as five per cent of the outstanding voting securities (i.e., issued shares of stock) of any of the companies hereinbefore mentioned except Pacific Gas and Electric Company; and, except as hereinafter stated, no person or company, directly or indirectly, owns or controls or holds with power to vote as much as five per cent of the outstanding voting securities (i.e., issued shares of stock) of said Pacific Gas and Electric Company.

Approximately nine and seventy-six one-hundredths (9-76/100) per cent of the voting securities of said Pacific Gas and Electric Company are owned by Western Power Corporation, and approximately eight and thirty-one one-hundredths (8-31/100) per cent of the voting securities of said Pacific Gas and Electric Company are owned of

record or beneficially by The North American Company. Applicants are advised that Western Power Corporation is a subsidiary of The North American Company, both of which have their offices at 60 Broadway in the City of New York, State of New York.

Said Pacific Gas and Electric Company is not controlled, directly or indirectly, by said Western Power Corporation and said The North American Company, or either of them (either alone or pursuant to any arrangement or understanding with any other person or persons), either through any intermediary person or persons or by any means or device whatsoever. Said Pacific Gas and Electric Company is not an intermediary company through which control of any other company is exercised by either said Western Power Corporation or said The North American Company. Neither the management nor the policies of said Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by said Western Power Corporation and said The North American Company, or by either of them, either alone or pursuant to any arrangement or understanding with any other person or persons.

G.

The applicants herein, in making this application, respectfully reserve, and refuse to waive, any constitutional or legal right, and protest that said Public Utility Holding Company Act of 1935 is

repugnant to the Constitution of the United States, and that they are not subject to any of the provisions of said Act, or to any rule or regulation adopted by the Securities and Exchange Commission under its authority.

Without prejudice to any of their rights under the Constitution and laws of the United States, applicants now present the following statement and request for orders.

A. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR ORDER UNDER SECTION 3 (A), SUBDIVISIONS (1) AND (2).

1. Exact name of applicants.

   Pacific Gas and Electric Company
   Great Western Power Company of California.

2. State of organization of applicants.

   California.

3. Address of principal executive offices of applicants.

   245 Market Street, San Francisco, California.

4. Names of all subsidiaries of the applicants which are public utility or holding companies (as defined in the Public Utility Holding Company Act of 1935).

   The names of all subsidiaries of Pacific Gas and Electric Company which are public utility or holding companies (as defined in said

Act) and the percentage of the outstanding voting securities (i.e., outstanding shares of stock) in such subsidiaries owned by Pacific Gas and Electric Company is shown below:

Names of Subsidiaries	Percentage of Voting Power
*Mt. Shasta Power Corporation	100%
*Sierra and San Francisco Power Company	100%
*Modesto Gas Company	100%
(a) *Great Western Power Company of California	99.5%
*California Electric Generating Company	66.7%
*Napa Valley Electric Company	100%
*Feather River Power Company	100%
*Great Western Power Company	100%
San Joaquin Light and Power Corporation	89.3%
Midland Counties Public Service Corporation	100%

Pacific Gas and Electric Company also owns 45.8% of the outstanding capital stock of Vallejo Electric Light and Power Company, which is a public utility engaged in the business of distributing and selling electricity in the City of Vallejo, California. The balance of the stock of said company is owned by persons other than Pacific Gas and Electric Company or its subsidiaries. Two members of the present board of directors of said Val-

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*Proceedings have been commenced for the winding up and voluntary dissolution of these corporations. Upon obtaining approval of the California Railroad Commission, the assets of these corporations will be transferred to Pacific Gas and Electric Company and the latter will assume and agree to perform all of said corporations' liabilities and obligations.

(a) The subsidiaries of Great Western Power Company of California (except Western Canal Company, which distributes water only and is not listed above) are indented to the right under the name of said company above.

lejo Company, which consists of five members, were nominated by Pacific Gas and Electric Company, and the other three directors were nominated by the other stockholders. Pacific Gas and Electric Company disclaims the actual existence of effective control of said Vallejo Company.

All of the subsidiary companies named above are California corporations and their principal executive offices are located at 245 Market Street, San Francisco, California.

5. The location and nature of the business of the applicants and their subsidiary companies.

Pacific Gas and Electric Company is predominantly a public utility company engaged in the production, purchase, transmission, distribution and sale of electricity and gas in northern and central California. It also is engaged in distributing and selling water in a number of small cities and towns and in certain rural areas, produces and sells steam in certain parts of the Cities of San Francisco and Oakland, operates a street railway and bus system in the City of Sacramento, and as an incident to its gas and electric business, sells small quantities of certain gas and electric appliances.

Great Western Power Company of California is engaged in the production, transmission, distribution and sale of electricity throughout a large territory in northern and central California. It is also engaged in the business of selling steam in certain parts of San Francisco and Oakland.

Napa Valley Electric Company is engaged in the business of distributing and selling electric energy in the City of St. Helena, California, and vicinity thereof.

Feather River Power Company is engaged in the production of electricity, which it sells to Great Western Power Company of California.

California Electric Generating Company owns a steam electric generating plant in Oakland which it leases to Great Western Power Company of California.

Great Western Power Company owns a transmission line extending from Caribou Power House to Big Bend Power House on the Feather River, which transmission line is operated by Great Western Power Company of California.

Sierra and San Francisco Power Company owns certain hydro-electric and steam-electric generating plants, electric transmission and distribution lines and a water distribution system, which properties are leased to and operated by Pacific Gas and Electric Company.

San Joaquin Light and Power Corporation is engaged in the production, purchase, transmission, distribution and sale of electricity throughout a large territory in central California. It is also engaged in the purchase, transmission, distribution and sale of natural gas in several cities in central California, and distributes and sells water in the City of Selma.

Midland Counties Public Service Corporation is engaged in the business of distributing and selling electricity in the southerly part of Monterey County, San Luis Obispo County and Santa Barbara County north of the Coast Range Mountains. It purchases the power distributed by it from San Joaquin Light and Power Corporation.

Modesto Gas Company is engaged in the business of distributing and selling gas in the City of Modesto, California.

Mt. Shasta Power Corporation is engaged in the production, transmission, distribution and sale of electricity in northern California.

All of the public utility business of the applicants and their subsidiaries named above is conducted in the State of California and all of their public utility assets are located in said State.

6. Brief description of the properties of Pacific Gas and Electric Company and its subsidiaries, including Great Western Power Company of California.

(a) Electric—Pacific Gas and Electric Company and its subsidiaries own and operate forty-seven hydro-electric generating plants (not including the two Hat Creek plants mentioned below) having a total installed rated capacity of 1,141,815 horsepower, and in connection therewith storage and regulating reservoirs, tunnels, conduits, transmission lines, and other appurtenant works. The location of the hydro-electric projects and the rated installed capacities of the power plants are shown in the following table.

Mt. Shasta Power Corporation operates two hydro-electric power plants located on Hat Creek, in Shasta County, California, having an installed capacity of 33,512 horsepower, under a lease from The Red River Lumber Company.

Pacific Gas and Electric Company and its subsidiaries own eleven steam-electric generating plants having a total installed rated capacity of 502,412 horsepower. The location, the capacities, and the owners of such steam electric generating plants are shown in the following table:

STEAM-ELECTRIC PLANTS OF PACIFIC GAS AND ELECTRIC COMPANY AND SUBSIDIARIES

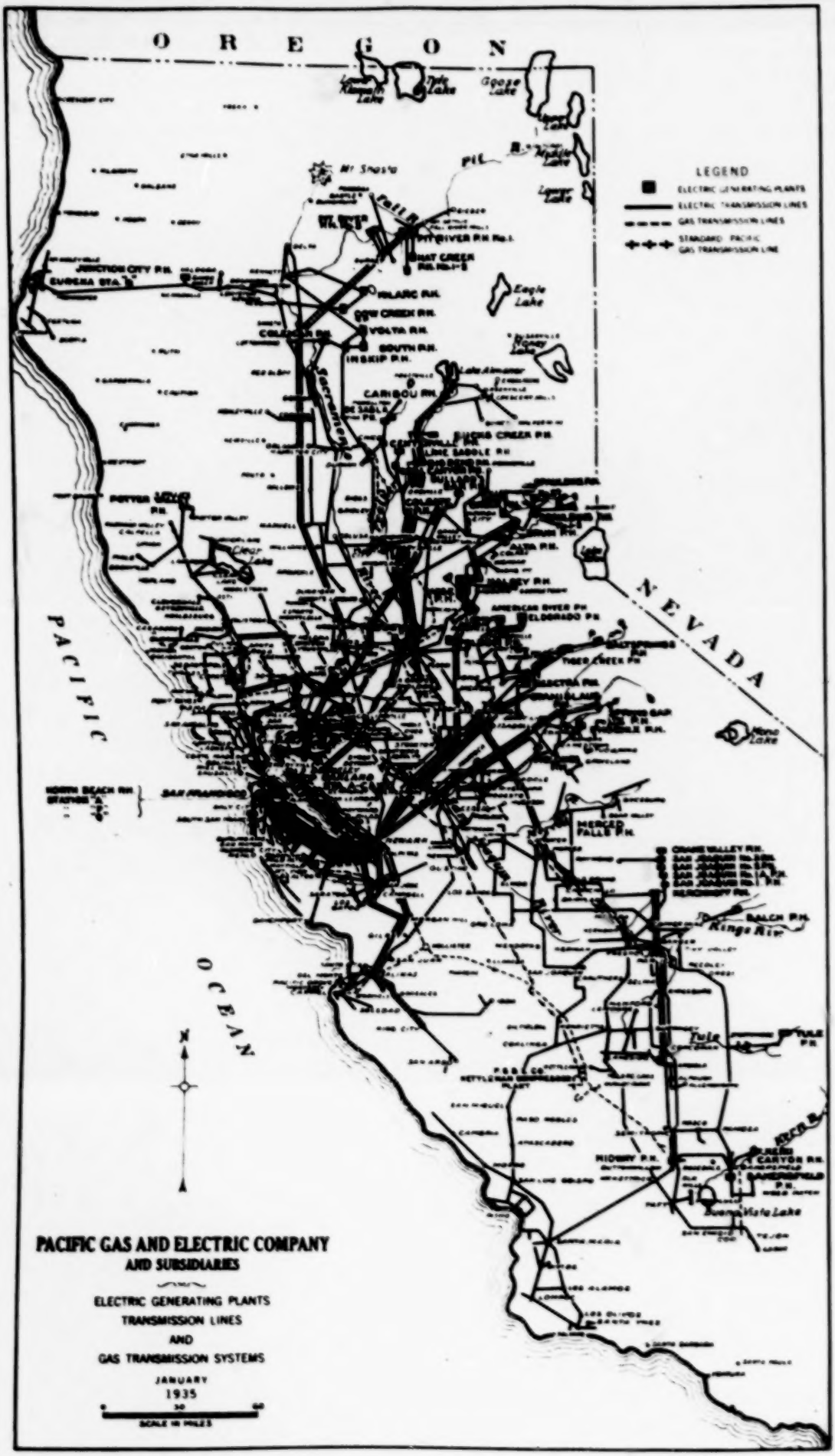
Name	No. of Plants	Total Horsepower	Location	Owner
1. Eureka	1	12,064	Eureka	P. G. & E. Co.
2. Station "A"	1	174,263	San Francisco	do.
3. Station "B"	1	23,458	Sacramento	do.
4. Station "C"	1	83,110	Oakland	do.
Total	4	292,895		
5. Station "P"	1	61,997	San Francisco	Great Western Power Co. of Calif.
6. Station "Q"	1	21,448	San Francisco	do.
7. Station "R"	1	6,702	San Francisco	do.
8. Station "W"	1	14,075	Oakland	California Electric Generating Co. (Subsidiary of Great Western Power Co. of California)
Total	4	104,222		
9. North Beach	1	36,193	San Francisco	Sierra & San Francisco Power Co.
10. Bakersfield	1	35,590	Bakersfield	San Joaquin Light and Power Corp.
11. Midway	1	33,512	Buttonwillow	do.
Total	2	69,102		
TOTAL CONSOLIDATED SYSTEM	11	502,412		

The electric generating plants of Pacific Gas and Electric Company and its subsidiaries form a part of an interconnected system. Pacific Gas and Electric Company and its subsidiaries own and operate 6122.2 miles of high voltage (60 KV or more) transmission lines.

Pacific Gas and Electric Company and its subsidiaries own and operate an electric distribution system extending into forty-six counties of northern and central California. Electric service is distributed in 134 incorporated cities and towns, 435 unincorporated communities and an extensive rural area in Northern and Central California. Pacific Gas and Electric Company and its subsidiaries own and operate approximately 29,305 miles of distribution lines, and the total number of electric consumers served on December 31, 1934, was 759,887. The extent of the territory served by Pacific Gas and Electric Company and its subsidiaries is shown on the map immediately following this page.

(b) Gas—Pacific Gas and Electric Company and its subsidiaries, San Joaquin Light and Power Corporation and Modesto Gas Company, own and operate an extensive gas transmission and distribution system in northern and central California. (See map) Ninety-seven per cent of the gas consumers are served with natural gas which Pacific Gas and Electric Company and said subsidiaries purchase, with minor exceptions, in the Buttonwillow gas field and the Kettleman Hills and Semi-Tropic oil and gas fields, which are located in California

approximately 200 miles south of San Francisco. At Kettleman Hills, Pacific Gas and Electric Company owns and operates a large compressor station from which the gas is transported to the various distribution systems through two large transmission pipe lines, one of which is owned by it and the other by Standard Pacific Gas Line, Incorporated. Pacific Gas and Electric Company owns fifty per cent of the outstanding capital stock of Standard Pacific Gas Line, Incorporated, and the latter has agreed to set aside and reserve for the exclusive use of Pacific Gas and Electric Company one-half of the carrying capacity of its gas line.


O R E G O N
NEVADA
PACIFIC OCEAN
LEGEND
ELECTRIC GENERATING PLANTS
ELECTRIC TRANSMISSION LINES
GAS TRANSMISSION LINES
STANDARD PACIFIC GAS TRANSMISSION LINE
PACIFIC GAS AND ELECTRIC COMPANY
AND SUBSIDIARIES
ELECTRIC GENERATING PLANTS
TRANSMISSION LINES
AND
GAS TRANSMISSION SYSTEMS
JANUARY
1935
SCALE IN MILES

Pacific Gas and Electric Company owns fourteen gas generating plants, one of which is leased to its subsidiary, San Joaquin Light and Power Corporation. Seven of these plants, having a total 20-hour daily capacity of 7,012,000 cubic feet of gas, are situated in Marysville, Eureka, Willows, Grass Valley, Red Bluff, Redding and Colusa, which are not connected with the natural gas transmission lines and manufacture gas. The remaining seven gas generating plants are located in San Francisco, Oakland, Sacramento, San Rafael, Stockton, Vallejo, and Fresno, which are now supplied with natural gas. Modesto Gas Company also owns a gas generating plant located in the City of Modesto, California. Since the introduction of natural gas, the seven plants last above mentioned of Pacific Gas and Electric Company and the plant of Modesto Gas Company have been adjusted and equipped to furnish gas manufactured from Diesel oil, and have a total 24-hour daily capacity of approximately 145,000,000 cubic feet of gas. Gas so manufactured has a high heat content and may be mixed with or substituted for natural gas as occasion may require. These plants are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines.

Pacific Gas and Electric Company and said two subsidiaries distribute gas in ninety-two incorporated cities and towns, and sixty-three unincor-

porated communities in northern and central California.

In the following table are set forth the number of miles of gas transmission and distribution lines of Pacific Gas and Electric Company and its subsidiaries, and the number of communities and number of gas consumers served on December 31, 1934.

	P. G. & E. Co.	Modesto Gas Company	San Joaquin Light & Power Corp.	Total
Miles Transmission Line	563.0	....	70.2	633.2
Miles Distribution Line	6,487.4	68.6	252.4	6,808.4
Incorporated Cities and Towns Served	86	1	5	92
Unincorporated Communities Served	60	....	3	63
No. of Gas Consumers	512,371	4,693	14,022	531,086

(c) Other Properties—Pacific Gas and Electric Company owns and operates an electric street railway and bus system in the City of Sacramento, steam heating systems in a portion of the Cities of San Francisco and Oakland, and water distribution systems in fourteen cities and small towns, among which are the Cities of King City, Salinas, Vacaville, Sonora and Auburn, and a water system for irrigation and mining purposes in Placer County, and to a limited extent in certain isolated areas. San Joaquin Light and Power Corporation owns a water distribution system in the City of Selma. Great Western Power Company of California owns a steam heating system in a portion of the Cities of San Francisco and Oakland.

All of the public utility properties of Pacific Gas and Electric Company and its subsidiaries above described are located in California. Pacific Gas and Electric Company and its subsidiaries do not purchase or sell any gas or electricity outside of California or at the state line.

Pacific Gas and Electric Company owns and operates a transmission (60-KV) line extending from its Spaulding Power House to Summit, which is located in California about twenty miles from the California-Nevada state line. Said transmission line connects at Summit with a transmission line owned and operated by Sierra Pacific Power Company, which is a public utility company distributing electricity in both California and Nevada. Pacific Gas and Electric Company sells and delivers electric power to said Sierra Pacific Power Company at Summit under a contract, dated March 23, 1923. Said contract, which was approved by the Railroad Commission of California, provides for the sale at wholesale and delivery at Summit to Sierra Pacific Power Company of a maximum of 5000 kilowatts of electric energy. The number of kilowatt hours sold to Sierra Pacific Power Company for the years 1932, 1933 and 1934 and the first six months of 1935 is shown under item 7(d) below.

Pacific Gas and Electric Company also owns two transmission lines (one line being 60-KV and the other 110-KV) which connect near Delta (which is located in California about seventy miles below the Oregon-California State line) with the transmis-

sion lines of The California Oregon Power Company, a public utility company which generates and sells electric energy in both California and Oregon. Pacific Gas and Electric Company purchases electric energy at wholesale from The California Oregon Power Company at Delta. The contracts under which said sale and delivery of power are made were entered into with the approval of the California Railroad Commission, and provide for the sale of a maximum of 44,600 kilowatts of electric energy. The number of kilowatt hours purchased from The California Oregon Power Company for the years 1932, 1933 and 1934 and the first six months of 1935 is shown under item 7(e) below.

The gas which is distributed and sold by Pacific Gas and Electric Company and its subsidiaries is all produced in California. Natural gas, constituting approximately 99 per cent of the gas distributed, is purchased from producing companies operating, with minor exceptions, in the Kettleman Hills and Semi-Tropic oil and gas fields and the Buttonwillow gas field. The Kettleman Hills field is located in Fresno and Kings Counties, and the Buttonwillow and Semi-Tropic fields are located in Kern County, California. The artificial gas used by Pacific Gas and Electric Company and its subsidiaries is all manufactured in California. No gas is sold by Pacific Gas and Electric Company or its subsidiaries outside of California, nor is any gas sold to any other company distributing gas outside of California.

7. Data showing the kilowatt hours (kwh) of electricity, the thousands of cubic feet (M-CF) of natural and manufactured gas, and the approximate BTU content of said gas, sold by applicants and each of their subsidiaries for the years 1932, 1933 and 1934 and the first six months of 1935.

(a) Sales by Applicants and Each of their Subsidiaries Direct to Retail Consumers

Name of Company	Kwh. Electricity Sold 1932	1933	1934	Six Months 1935
P. G. & E. Co.	1,575,899,141	1,579,202,032	1,709,353,991	817,419,032
Sierra & S. F. Power Co.	198,204,878	194,010,697	202,754,739	87,837,172
G. W. P. Co. of Calif.	472,919,169	455,531,223	497,176,274	249,136,099
Napa Valley Elec. Co.	2,836,248	2,830,785	3,224,137	1,557,868
Mt. Shasta Power Corp.	1,323,295	1,484,423	1,516,664	436,998
S. J. L. & P. Co.	453,776,730	483,457,493	603,633,392	206,071,695
M. C. P. S. Co.	75,666,455	66,394,174	74,404,295	32,721,114
Total Sold to Consumers	2,780,625,916	2,782,910,827	3,092,063,492	1,395,179,978
	M.-C.F. Gas Sold			
P. G. & E. Co.—Mfg.	479,487.9	458,030.7	452,055.3	275,192.8
—Natural	30,846,701.1	35,887,339.2	36,617,027.6	20,608,145.9
Modesto Gas Co.—Nat.	462,421.2	473,560.3	577,152.0	336,993.7
S. J. L. & P. Co.—Nat.	2,501,810.1	2,687,125.7	3,182,309.1	2,098,087.1
Total Sold to Consumers	34,290,420.3	39,506,055.9	40,828,544.0	23,318,419.5

Note: B.t.u. Heat Content: Natural Gas 1150 to 1180 B.t.u. per cubic foot; Diesel Oil Gas approximately equivalent to natural gas; other Manufactured Gas 540 B.t.u. per cubic foot.

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(b) Sales by Applicants and Each of their Subsidiaries Wholesale to Other Companies and Municipalities for Resale

	Kwh. Electricity Sold			
P. G. & E. Co.	110,264,982	121,862,232	124,669,230	57,051,002
Sierra & S. F. Power Co.	4,023,192	2,304,200	2,410,380	827,760
G. W. P. Co. of Calif.	26,547,469	22,627,115	24,380,360	12,711,320
Napa Valley Elec. Co.	———	———	———	———
Mt. Shasta Power Corp.	———	———	———	———
S. J. L. & P. Co.	9,152,325	9,493,276	24,157,536	4,558,675
M. C. P. S. Co.	1,389,600	1,407,600	1,434,530	729,500
Total Sold to Other Companies & Municipalities for Resale	151,377,568	157,694,423	177,052,036	75,878,257
	M.-C.F. Natural Gas Sold (1150 to 1180 B.t.u.)			
P. G. & E. Co.	303,881.6	296,801.1	246,138.8	156,938.1
Modesto Gas Co.	———	———	———	———
S. J. L. & P. Co.	———	———	———	———
Total Sold to Other Companies for Resale	303,881.6	296,801.1	246,138.8	156,938.1

(c) Total Sales by Applicants and Each of their Subsidiaries (Sum of (a) and (b) Above)

	Kwh. Electricity Sold			
P. G. & E. Co.	1,686,164,123	1,701,064,264	1,834,023,221	874,470,034
Sierra & S. F. Power Co.	202,228,070	196,314,897	205,165,119	88,664,932
G. W. P. Co. of Calif.	499,466,638	478,158,338	521,556,634	261,847,419
Napa Valley Elec. Co.	2,836,248	2,830,785	3,224,137	1,557,868
Mt. Shasta Power Corp.	1,323,295	1,484,423	1,516,664	436,998
S. J. L. & P. Co.	462,929,055	492,950,769	627,790,928	210,630,370
M. C. P. S. Co.	77,056,055	67,801,774	75,838,825	33,450,614
Cons. System Sales	2,932,003,484	2,940,605,250	3,269,115,528	1,471,058,235

	M.-C.F. Gas Sold			
P. G. & E. Co.—Mfd. Gas	479,487.9	458,030.7	452,055.3	275,192.8
—Natural	31,150,582.7	36,184,140.3	36,863,166.4	20,765,084.0
Modesto Gas Co.—Nat.	462,421.2	473,560.3	577,152.0	336,993.7
S. J. L. & P. Co.—Nat.	2,501,810.1	2,687,125.7	3,182,309.1	2,098,087.1
Cons. System Sales	34,594,301.9	39,802,857.0	41,074,682.8	23,475,357.6

(d) Sales to Sierra Pacific Power Company at Summit, California (which are included in (b) above)

Kwh. Sold			
1932	1933	1934	First Six Months 1935
12,366,000	25,180,762	17,586,700	12,840,930

(e) Kilowatt-Hours Purchased by Pacific Gas and Electric Company and its Subsidiary, Mt. Shasta Power Corporation, from The California Oregon Power Company at Delta, California.

Kwh. Purchased			
1932	1933	1934	Six Months First 1935
252,994,900	261,038,200	259,023,700	128,690,800

Neither of the applicants nor any of their subsidiaries distributes or sells gas or electricity outside of the State of California, or at the border of the State. Neither of the applicants nor any of their subsidiaries owns or operates any electric transmission or gas pipe lines which deliver or receive electricity or gas at the border of the State of California. Neither of the applicants nor any of their subsidiaries purchases gas or electricity outside of the State of California or at the border of the State.

8. Financial Statements are attached.

The consolidated profit and loss statements of Pacific Gas and Electric Company and its subsidiaries and the profit and loss statements of Pacific Gas and Electric Company and each of its subsidiaries for the years 1932, 1933 and 1934 and the first six months of 1935 are attached hereto.

9. Statement of reasons why applicants and their subsidiaries are entitled, under Section 3(a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935.

Applicants and their subsidiaries are entitled, under Section 3(a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935, because, as appears from the facts stated above,

(A) applicants, and every subsidiary company thereof which is a public-utility company are "predominantly intrastate in character" and carry on all their public utility business within the State of California in which they are organized (Section 3(a), subdivision (1) of said Act), and

(B) each of the applicants "is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized" (Section 3(a), subdivision (2) of said Act).

B. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR AN ORDER UNDER SECTION 2(a), SUBDIVISION (8).

(a) Name and address of applicant and of specified holding company.

(1) Applicant.

Pacific Gas and Electric Company,
245 Market Street, San Francisco, California.

(2) Specified holding company.

The North American Company,
60 Broadway, New York City, N. Y.

(b) Names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities or more than ten per cent of any other class of securities of applicant, giving, as to each class of securities involved, the amount outstanding and the amount so owned or controlled or held by each such person.

Applicant has only three classes of securities outstanding, viz., common stock, preferred stock and bonds. Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder of record is entitled to one vote for each share held, and at any election for directors is entitled to cumulate his votes. The total number of shares of common stock now issued and outstanding is 6,261,357, and the total number of shares of pre-

ferred stock now issued and outstanding is 5,234,466. Holders of bonds have no voting rights.

The names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities (i.e., issued shares of capital stock) are as follows:

Owner of Record	Beneficial Owner	Class of Security	Number of Shares owned
*Western Power Corporation 60 Broadway New York City, N. Y.	Same	Common Stock	1,122,060
The North American Company 60 Broadway New York City, N. Y.	Same	" "	886,670
	The North American Company 60 Broadway New York City, N. Y.	" "	68,326
Standard Gas and Electric Company 231 So. LaSalle St. Chicago, Illinois	Same	Common Stock	200,420

*Applicant is advised that Western Power Corporation is a subsidiary of The North American Company.

The percentages of the total voting power represented by the common stock owned by Western Power Corporation and by The North American Company, as beneficial owner and owner of record, are 9.76 and 8.31 per cent, respectively.

The percentage of the total voting power represented by the common stock owned by Standard Gas and Electric Company is 1.79 per cent.

So far as known to applicant, no person owns more than 10 per cent of applicant's outstanding bonds. $84,384,000 face value of applicant's General and Refunding Mortgage Bonds, due 1942, are pledged with American Trust Company, San Francisco, "California Trustee" under applicant's First and Refunding Mortgage. Said General and Refunding Mortgage Bonds are held by said American Trust Company as additional security for applicant's First and Refunding Mortgage Bonds issued pursuant to said First and Refunding Mortgage.

(c) Names of officers and directors of applicant and the names of such officers and directors who are officers, directors, nominees or appointees of any holding or public-utility company.

Following is a list of the directors and principal executive officers of applicant.

Name	Office held
Allen L. Chickering	Director
W. H. Crocker	"
F. W. Doolittle	"
F. T. Elsey	Director
Norman B. Livermore	"
John D. McKee	"
C. O. G. Miller	"
John J. O'Brien	"
James B. Black	President and Director
P. M. Downing	First Vice-President, General Manager and Director
John P. Coghlan	Second Vice-President and Assistant to the President and Director
D. H. Foote	Third Vice-President and Secretary-Treasurer and Director
A. E. Wishon	Vice-President and Assistant General Manager
A. H. Markwart	Vice-President in Charge of Engineering
W. G. Vincent	Vice-President and Executive Engineer
R. E. Fisher	Vice-President in Charge of Public Relations and Sales
E. W. Hodges	Comptroller

The only officers or directors of applicant above named who are officers, directors, nominees or appointees of any holding or public utility company (as defined in the Public Utility Holding Company Act of 1935), other than applicant and its subsidiaries, are the following:

(1) Mr. Chickering, who is a vice-president and a director of San Diego Consolidated Gas and Electric Company.

(2) Mr. Miller, who is president and a director of Pacific Lighting Corporation and also a director of the latter company's subsidiaries, Southern California Gas Company and Southern Counties Gas Company of California.

(3) Mr. Doolittle, who is a vice-president and a director of The North American Company and also is an officer of other companies.

(4) Mr. O'Brien, who is president and a director of H. M. Byllesby and Company and Standard Gas and Electric Company and also is an officer of numerous other companies.

Mr. James B. Black was elected president of applicant on November 20, 1935. Prior thereto and while he was a director of applicant, Mr. Black was a vice-president of The North American Company, a vice-president and a director of Western Power Corporation, and a director of North American Utility Securities Corporation. On November 20, 1935 and prior to his election as president of applicant, Mr. Black tendered his resignation as vice-president of The North American Company, vice-president and director of Western Power Corporation, and director of North American Utility Securities Corporation, and severed all connection and relationship with said companies and their subsidiaries.

The board of directors of applicant, as provided by its articles of incorporation, consists of fifteen members. At the present time, there are three vacancies on the board resulting from the recent death of three members, namely, Mr. A. F. Hockenbeamer (the late president of applicant), Mr. F. B. Anderson and Mr. Guy C. Earl.

(d) A list and a brief statement of the nature of any contracts, agreements, or other arrangements, presently in force or in force at any time since December 31, 1933, providing for the furnishing of any management, supervision, or substantial services of a similar nature, to applicant by any company.

There are no such contracts, agreements or other arrangements.

(e) The amount, interest rate, and name of lender, with respect to any loans or advances made to applicant by any company, as presently outstanding and as outstanding at each of the last three annual balance-sheet dates, excluding unsecured bank loans made in the ordinary course of business and not covered by (f) or (g) below.

There are no such loans or advances.

(f) A brief description of any factors relevant to the question whether or not applicant directly or indirectly exercises control or a controlling influence over any other public-utility company.

Applicant exercises control over its subsidiary public-utility companies named in answer to item 4 of part A of this application. Applicant does not, directly or indirectly, exercise control or a controlling influence over any other public-utility company.

(g) Brief statement of any factors relevant to the question whether or not control or a controlling influence, as described in clauses (i), (ii) or (iii) of Section 2(a)(8), is exercised directly or indirectly by any other company (including companies more than one degree removed from applicant) with respect to applicant or with respect to any other company through applicant.

(1) Since its incorporation on October 10, 1905, applicant has been and is now an independent California public-utility company. Applicant is managed and its policies are determined, exclusively, by its board of directors and officers.

(2) The North American Company has never exercised or attempted to exercise, either directly or indirectly, control or a controlling influence over the management or policies of applicant or any of its subsidiaries.

(3) The North American Company does not receive, either directly or indirectly through any of its subsidiaries, any money or other valuable consideration from applicant or any of the latter's subsidiaries, except the regularly declared dividends upon the common stock of applicant owned by The North American Company and its subsidiaries.

(h) Statement of reasons why applicant is entitled to an order, under Section 2(a), subdivision (8) of said Act, declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company.

Applicant is entitled to an order under said Section 2(a), subdivision (8), declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company because, as appears from the facts stated above,

(i) applicant is not controlled, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever,

(ii) applicant is not an intermediary company through which such control of another company is exercised, and

(iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by The North American Com-

pany (either alone or pursuant to an arrangement or understanding with one or more other persons).

Wherefore, Pacific Gas and Electric Company and Great Western Power Company of California (a subsidiary of Pacific Gas and Electric Company), pray

(A) for an order, under Section 3(a), subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, exempting them and all of their subsidiaries from the provisions of said Act, and

(B) for an order, under Section 2(a), subdivision (8), of said Act declaring that neither said Pacific Gas and Electric Company nor any of its subsidiary companies is a subsidiary of The North American Company.

Dated: San Francisco, California, November 26, 1935.

PACIFIC GAS AND ELECTRIC COMPANY
By JAMES B. BLACK
President

Attest: D. H. FOOTE
Secretary

GREAT WESTERN POWER COMPANY OF CALIFORNIA
By JAMES B. BLACK
President

Attest: D. H. FOOTE
Secretary

Securities and Exchange Commission

Washington, D. C.

Public Utility Holding Company Act of 1935

AMENDED AND SUPPLEMENTAL APPLICATION OF PACIFIC GAS AND ELECTRIC COMPANY (a California Corporation)

(A) For an Order, Under Section 3(A), Subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, Exempting It and All of Its Subsidiaries From the Provisions of Said Act, and

(B) For an Order, Under Section 2(A), Subdivision (8), of Said Act Declaring That Neither Said Pacific Gas and Electric Company nor Any of Its Subsidiary Companies Is a Subsidiary of The North American Company.

Docket Number 31-55

PRELIMINARY STATEMENT

I.

Pacific Gas and Electric Company, the applicant herein, is a corporation duly organized and existing under the laws of the State of California, has its office and principal place of business at 245 Market Street in the City and County of San Francisco in said State, and is a public utility company which owns and operates facilities which are situate in

California and are used for the generation, transmission and distribution of electric energy for sale at wholesale and retail, and other facilities which also are situate in California and are used for the generation of gas and for transmission and distribution of both natural and manufactured gas for sale at retail for light and heat. At the present time, Pacific Gas and Electric Company is also a holding company in respect to only one California public utility company and several other California corporations, none of which is a public utility company.

II.

The original application in this proceeding was filed with the Securities and Exchange Commission November 29, 1935, and was a joint application of said Pacific Gas and Electric Company and of Great Western Power Company of California. At that time, said Great Western Power Company of California was a subsidiary company of said Pacific Gas and Electric Company, and was also a holding company with respect to four other companies, as stated in said original application. At that time, the direct public utility subsidiaries of Pacific Gas and Electric Company were

Mt. Shasta Power Corporation
Sierra and San Francisco Power Company
Modesto Gas Company
Midland Counties Public Service Corporation
Great Western Power Company of California
San Joaquin Light and Power Corporation

Also at that time, the indirect public utility subsidiaries of Pacific Gas and Electric Company and direct public utility subsidiaries of Great Western Power Company of California were

Napa Valley Electric Company
Feather River Power Company
Great Western Power Company
California Electric Generating Company

All of the companies mentioned in this paragraph were corporations organized under the laws of the State of California and were public utility companies whose operations as such were confined to the State of California.

III.

On July 30, 1936, said Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great Western Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company, having previously wound up their affairs and distributed their operating properties and other assets to Pacific Gas and Electric Company, were finally dissolved. Midland Counties Public Service corporation, having previously wound up its affairs and distributed its operating properties and other assets to Pacific Gas and Electric Company, was finally dissolved on or about December 28, 1939. San Joaquin Light and Power Cor-

poration is now in process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to certain minority common stockholders whose rights have not yet been judicially determined. Said San Joaquin Light and Power Corporation is no longer a public utility company and neither owns nor operates any gas or electric properties and conducts no public utility business. The distribution of assets of each of the aforesaid corporations was made under authority of an order of the Railroad Commission of the State of California.

IV.

When said original application was filed and at all times since then, the applicant herein has held and owned, and now holds and owns, approximately 45.8 per cent of the outstanding shares of capital stock of Vallejo Electric Light and Power Company, which is a corporation organized under the laws of the State of California and is engaged in the business of distributing and selling electric energy in the City of Vallejo and its vicinity, in the State of California. In the said original application, Pacific Gas and Electric Company disclaimed, and in this amended and supplemental application disclaims, the possession of effective control of said Vallejo Electric Light and Power Company.

V.

Applicant is not a holding company with respect to any public utility company other than said Vallejo Electric Light and Power Company. Applicant does not now possess, and never has possessed, effective control of said Vallejo Electric Light and Power Company.

VI.

All of the utility assets owned or operated by the applicant, for the generation, transmission, distribution and sale of electric energy, are physically interconnected and may be, and in fact are, economically operated as a single interconnected and coordinated system confined in its operations to a single area in the State of California, and constitute an integrated public utility system. Said system is not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California.

VII.

All of the utility assets owned or operated by the applicant, for the generation, transmission, distribution and sale of natural and manufactured gas, are so located and related that substantial economies may be, and in fact are, effectuated by being operated as a single coordinated system which is confined in its operations to the central and northern part of the State of California, and which is

not so large as to impair the advantages of localized management, efficient operation and the effectiveness of regulation by and under authority of the laws of the State of California, and constitute an integrated public utility system. By far the greater part of the gas distributed and sold by said companies is natural gas the greater part of which is obtained from a common source in the State of California and is transmitted by main pipe lines to the principal centers of distribution in the central and northern part of said state. For additional information on this point see Part A, pages 6, 7 and 9 of this application.

VIII.

Applicant is intrastate in character and carries on and conducts its public utility business exclusively in the State of California, in which it and all of its subsidiary companies are incorporated. Applicant is now and ever since January 1, 1912, has been predominantly a public utility company, and its public utility operations do not now extend and never have extended beyond the State of California.

IX.

Approximately 17.71 per cent of Applicant's issued and outstanding shares of stock are now owned by The North American Company, a New Jersey corporation, as the owner of record or as the beneficial owner. But applicant is not controlled, directly or indirectly, by said The North American

Company (either alone or pursuant to an arrangement or understanding with one or more other persons), either through one or more intermediary persons or by any means or device whatsoever; applicant is not an intermediary company through which control of any other company is exercised by said The North American Company; and neither the management nor the policies of the applicant are subject to a controlling influence, directly or indirectly, by said The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons). It is neither necessary nor appropriate in the public interest or for the protection of investors or consumers that the applicant should be subject to the obligations, duties, and liabilities imposed by the Public Utility Holding Company Act of 1935, upon subsidiary companies of holding companies. Applicant is informed that said The North American Company is a registered holding company under the provisions of said Act. For further particulars reference is hereby made to Part B of this application.

X.

The Public Utilities Act of the State of California was enacted in December, 1911, and went into effect March 23, 1912. That act granted to the Railroad Commission of the State of California power and authority (a) to regulate and control the issue by public utilities of stocks, bonds, and other securities (b) to prescribe and regulate the

rates and charges of public utilities for services and commodities (c) to prescribe regulations governing the performance of service and the furnishing of commodities by public utilities (d) to prescribe and establish a uniform system of accounts for public utilities and (e) generally, to supervise and regulate every public utility in the State and to do all things necessary and convenient in the exercise of its power and jurisdiction. Under that Act as originally enacted, the Railroad Commission did not have authority to regulate rates and charges in municipalities which retained their former power to regulate rates. But in 1915, by an amendment of the Act which went into effect August 8, 1915, the Railroad Commission's power to regulate rates was made plenary throughout the State.

XI.

All shares of applicant's common stock now issued and outstanding, except 1,279,950 shares of the par value of $25 each, issued in lieu of 319,987½ shares of common stock of the par value of $100 each which were outstanding March 23, 1912, have been issued under authority of and in accordance with orders made by the Railroad Commission of the State of California. All of applicant's preferred stock now issued and outstanding, including 410,000 shares of the par value of $25 each issued in lieu of 100,000 shares of applicant's original preferred stock of the par value of $100 each which were outstanding March 23, 1912, have been issued

under authority of and in accordance with orders of said Railroad Commission. All bonds issued and assumed by applicant and now outstanding have been issued under and in accordance with orders of said Railroad Commission.

XII.

Said Railroad Commission, by order effective January 1, 1913, prescribed a uniform system of accounts for public utilities. Ever since January, 1913, applicant has kept its accounts in accordance with the system as originally prescribed and as amended from time to time by said Railroad Commission.

XIII.

Applicant has carefully considered the recitals contained in Section 1 of said Public Utility Holding Company Act of 1935, and is advised and believes and therefore avers that none of the abuses mentioned and referred to in said Section 1 have at any time arisen out of or existed by reason of applicant's relations with its present or any of its former subsidiaries, or by reason of said The North American Company's acquisition and ownership of shares of stock in the applicant to the extent and under the circumstances set forth in Part B of this application.

XIV.

The applicant herein, in making this application, respectfully reserves, and refuses to waive, any constitutional or legal right, and protests that said Public Utility Holding Company Act of 1935, if

and to the extent that its provisions may be applicable to applicant, is repugnant to the Constitution of the United States, and that applicant is not subject to any of the provisions of said Act, or to any rule or regulation adopted by the Securities and Exchange Commission under its authority.

Without prejudice to any of its rights under the Constitution and laws of the United States, applicant now presents the following statements and prayer for orders.

PART A. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR ORDER UNDER SECTION 3 (a), SUBDIVISIONS (1) AND (2)

1. Exact name of applicant.

Pacific Gas and Electric Company.

2. State of organization of applicant and of each of its subsidiaries.

California.

3. Address of principal executive offices of applicant and of each of its subsidiaries.

Applicant	245 Market Street, San Francisco, Calif.
Arlington Properties Company Ltd.	" " "
Crystal Lake Company Ltd.	" " "
San Joaquin Light and Power Corporation	" " "
Valley Electrical Supply Company	" " "
Western Canal Company	" " "
Standard Pacific Gas Line Inc.	225 Bush Street, San Francisco, Calif.
Vallejo Electric Light and Power Company	Vallejo, California.

4. Names of all of applicant's subsidiaries and of all other companies five per cent or more of whose issued shares are owned by the applicant.

The names of all of applicant's subsidiaries and of all other companies five per cent or more of whose issued shares of stock is owned by applicant, and the percentage of the outstanding voting securities (i. e., outstanding shares of stock) in such subsidiaries and other companies owned, directly or indirectly, by applicant are shown below:

Names of Subsidiaries and Other Companies	Percentage of Voting Power
Arlington Properties Company Ltd.	100%
Crystal Lake Company Ltd. (subsidiary of Arlington Properties Company Ltd.)	100%
San Joaquin Light and Power Corporation	99.8+%
Standard Pacific Gas Line Inc.	50%
Vallejo Electric Light and Power Company	45.8%
Valley Electrical Supply Company	95%
Western Canal Company	85%

None of the companies named in this Item 4, except Vallejo Electric Light and Power Company, is a public utility company within the meaning of that term as defined in Section 2 of the Public Utility Holding Company Act of 1935; and none of said companies, except Vallejo Electric Light and Power Company, either owns or operates any facilities used for the generation, transmission or distribution of electric energy for sale, or any facilities used for the distribution at retail of natural or manufactured gas for heat, light or power.

Vallejo Electric Light and Power Company is

a public utility engaged in the business of distributing and selling electric energy in the City of Vallejo in the State of California. Its board of directors consist of five members, two of whom were nominated by the applicant and the remaining three were nominated by other stockholders. The applicant disclaims possession of control of said Vallejo Electric Light and Power Company.

5. The location and nature of the business of the applicant and of the other companies listed in Item 4.

The applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California, under whose laws it is incorporated. Applicant's principal business is the production, purchase, transmission, distribution, and sale of electric energy and natural and manufactured gas in the northern and central parts of the State of California. Applicant also distributes and sells water to the public in a number of small cities and towns and in some rural areas; produces, distributes and sells steam in parts of the Cities of San Francisco and Oakland, operates a street railway and bus system in the City of Sacramento; and, as an incident to its gas and electric business, sells some gas and electric appliances, all in the State of California and not elsewhere. The location of the properties and facilities used by the applicant in its public utility business will be more definitely shown in Item 6 of this statement. All of applicant's public utility business is conduct-

ed, and all of its public utility assets are located, in the State of California.

The location and nature of the business of Vallejo Electric Light and Power Company is sufficiently stated in Item 4 of this statement.

All of the properties and assets of the other companies named in Item 4 of this statement are located, and all of their business is conducted, in the State of California.

6. Brief description of the properties of applicant.

(a) Electric—Applicant owns and operates forty-seven hydro-electric generating plants (not including the two Hat Creek plants hereinafter mentioned) having a total installed rated capacity of 1,143,688 horsepower, and in connection therewith storage and regulating reservoirs, tunnels, conduits, transmission lines, and other appurtenant works. The location of these hydro-electric projects and the rated installed capacities of these power plants are shown in the following table.

HYDRO-ELECTRIC PROJECTS OF APPLICANT

	Name of Project	No. of Plants	Total Horsepower	Location
1.	American River	1	8,184	American River
2.	Battle Creek (Coleman, Inskip, South and Volta Plants)	4	44,906	Battle Creek
3.	Bullards Bar	1	10,891	No. Fork Yuba River
4.	Colgate	1	20,878	No. Fork Yuba River
5.	DeSabla-Centerville (DeSabla and Centerville Plants)	2	26,005	Butte Creek
6.	Eldorado	1	33,512	American River
7.	Electra	1	26,810	Mokelumne River
8.	Folsom	1	5,027	American River
9.	Junction City	1	2,882	Canyon Creek
10.	Kilarc-Cow Creek (Kilarc and Cow Creek Plants)	2	6,032	Cow Creek
11.	Oro (Coal Canyon and Lime Saddle Plants)	2	4,021	West Fork Feather River
12.	Potter Valley	1	10,054	Eel and Russian Rivers
13.	Salt Springs (Salt Springs and Tiger Creek Plants)	2	95,174	Mokelumne River
14.	South Yuba (Alta, Deer Creek, Drum, Halsey, Wise and Spaulding Nos. 1, 2			South Yuba and

	and 3 Plants)	3	144,828	Bear Rivers
15.	Big Bend	1	87,131	No. Fork Feather River
16.	Caribou	1	89,369	No. Fork Feather River
17.	Bucks Creek	1	67,024	No. Fork Feather River
18.	Pit River No. 1	1	93,834	Pit River
19.	Pit River No. 3	1	108,580	Pit River
20.	Melones	1	36,193	Stanislaus River
21.	Phoenix	1	2,681	Stanislaus River
22.	Spring Gap	1	10,054	Stanislaus River
23.	Stanislaus	1	45,576	Stanislaus River
24.	Balch	1	44,236	Kings River
25.	Crane Valley (Crane Valley, A. G. Wishon and San Joaquin Nos. 1, 1-A 2 and 3 Plants)	5	35,087	North Fork San Joaquin River
26.	Kerckhoff	1	57,105	San Joaquin River
27.	Kern River	1	14,209	Kern River
28.	Merced Falls	1	5,362	Merced River
29.	Tule River	1	8,043	Tule River
	TOTAL	47	1,143,688	

Applicant operates two hydro-electric power plants located on Hat Creek in Shasta County, California, having an installed capacity of 33,512 horsepower, under a lease from The Red River Lumber Company.

Applicant owns nine steam-electric generating plants having a total installed rated capacity of 575,905 horsepower. The location and the capacities of such steam-electric generating plants are shown in the following table:

STEAM-ELECTRIC PLANTS
OF APPLICANT

Name	No. of Plants	Total Horsepower	Location
1. Eureka	1	19,772	Eureka
2. Station "A"	1	184,317	San Francisco
3. Station "B"	1	25,134	Sacramento
4. Station "C"	1	160,020	Oakland
5. Station "P"	1	61,997	San Francisco
6. Station "Q"	1	21,448	San Francisco
7. North Beach	1	36,193	San Francisco
8. Bakersfield	1	33,512	Bakersfield
9. Midway	1	33,512	Buttonwillow
TOTAL	9	575,905	

Applicant owns and operates 6,138.5 miles of high voltage (60 kv or more) transmission lines.

Applicant owns and operates an electric distribution system extending into forty-six counties of northern and central California, and distributes electric energy in 137 incorporated cities and towns, in 235 unincorporated communities each having an estimated population of 250 and over, and in extensive rural areas in said forty-six counties.

Applicant owns and operates approximately 33,306 miles of distribution lines (44 kv or less), and the total number of electric customers served on June 30, 1940, was 909,155. The extent of the territory served by applicant is shown on the map immediately following this page.

All of the aforesaid electric plants, transmission lines and distribution lines are physically interconnected and constitute an integrated public utility system in California.

(b) Gas—Applicant owns and operates an extensive gas transmission and distribution system in northern and central California. (See attached map.) Ninety-nine per cent of the gas customers are served with natural gas which applicant purchases, with minor exceptions, in the Buttonwillow, Kettleman Hills, Ten Sections, Belridge, Trico, and Northeast Coalinga oil and gas fields, which are located in California approximately 200 miles south of San Francisco, and in five fields located respectively near Tracy, Rio Vista, Marysville, Stockton, and Fortuna, all in California. At Kettleman Hills, applicant owns and operates a large compressor station from which the gas is transported to the principal distribution systems through two large transmission pipe lines, one of which is owned by it and the other by Standard Pacific Gas Line, Incorporated. Applicant owns fifty per cent of the outstanding capital stock of Standard Pacific Gas Line, Incorporated, and the latter has agreed to set aside and reserve for the exclusive use of applicant one-half of the carryiny capacity of its gas line. Standard Pacific Gas Line, Incorporated, does not distribute or sell at retail any gas.

Applicant owns fifteen gas generating plants. Six of these plants, having a total daily capacity of

3,372,000 cubic feet of gas, are situated in Eureka, Willows, Grass Valley, Red Bluff, Redding, and Isleton, which are not connected with the natural gas transmission lines, and manufacture gas. The remaining nine gas generating plants are located in Colusa, Marysville, Modesto, San Francisco, Oakland, Sacramento, San Rafael, Stockton, and Fresno, which are now supplied with natural gas. Since the introduction of natural gas, the nine plants last above mentioned have been adjusted and equipped to furnish gas manufactured from Diesel oil (except Colusa Plant, which is equipped to furnish butane-air gas), and have a total daily capacity of approximately 147,628,000 cubic feet of gas. Gas so manufactured has a high heat content and may be mixed with or substituted for natural gas as occasion may require. These plants are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines.

Applicant distributes gas in 101 incorporated cities and towns, in seventy-nine unincorporated communities each having an estimated population of 250 or more, and in numerous rural areas, in northern and central California.

In the following table are set forth the number of miles of gas transmission and distribution lines of Applicant, the number of incorporated cities and towns and unincorporated communities and

the number of gas customers served on June 30, 1940.

Miles Transmission Line	809
Miles Distribution Line	7,630
Incorporated Cities and Towns Served	101
Unincorporated Communities Served	79
Number of Gas Customers	636,316

(c) Other Properties—Applicant owns and operates an electric street railway and bus system in the City of Sacramento, steam heating systems in parts of the Cities of San Francisco and Oakland, and water distribution systems in fifteen cities and small towns, among which are King City, Salinas, Vacaville, Sonora, Selma, and Auburn, and a water system for irrigation and mining purposes in Placer County, and to a limited extent in certain isolated areas.

All of the public utility properties of applicant above described are located in California. Applicant does not purchase or sell any gas or electricity outside of California or at the state line.

Applicant owns and operates two transmission (60 kv) lines extending from its Spaulding and Drum Power Houses to Summit, which is located in California about twenty miles from the California-Nevada state line. Said transmission lines connect at Summit with transmission lines owned and operated by Sierra Pacific Power Company, which is a public utility company distributing electricity in both California and Nevada. Applicant sells and delivers electric power to said Sierra Pacific Power

Company at Summit under a contract, dated June 6, 1938. Said contract, which was approved by the Railroad Commission of California, provides for the sale at wholesale and delivery at Summit to Sierra Pacific Power Company of electric energy and stand-by service. The number of kilowatt hours sold to Sierra Pacific Power Company for the years 1935 to 1939 inclusive and the first six months of 1940 is shown under item 7 below.

Applicant also owns two transmission lines (one line being 60 kv and the other 110 kv) which connect near Delta (which is located in California about seventy miles below the Oregon-California state line) with the transmission lines of The California Oregon Power Company, a public utility company which generates and sells electric energy in both California and Oregon. Applicant purchases electric energy at wholesale from The California Oregon Power Company at Delta. The contracts under which said sale and delivery of power are made were entered into with the approval of the California Railroad Commission, and provide for the sale of a maximum of 42,600 kilowatts of electric energy. The number of kilowatt hours purchased from The California Oregon Power Company for the years 1935 to 1939 inclusive and the first six months of 1940 is shown under item 7 below.

The gas which is distributed and sold by applicant is all produced in California. Natural gas, constituting approximately 99 per cent of the gas

distributed, is purchased from producing companies operating, with minor exceptions, in the Kettleman Hills, Buttonwillow, Belridge, Northeast Coalinga, Ten Sections, and Trico oil and gas fields located in Fresno, Kings, Kern and Tulare Counties, in the Tracy and McDonald Island gas fields in San Joaquin County, in the Rio Vista gas field in Solano County, and in the Marysville-Buttes gas field in Sutter County, California. The artificial gas used by applicant is all manufactured in California. No gas is sold by applicant outside of California, or to any other company distributing gas outside of California.

7. Data showing the kilowatt hours (kwh) of electric energy, the thousands of cubic feet (mcf) of natural and manufactured gas and the approximate B. T. U. content of said gas sold by applicant and its former subsidiaries for the years 1932 to 1939 inclusive and the first six months of 1940.

The data with respect to the kilowatt hours and thousands of cubic feet of natural and manufactured gas sold in the years 1932, 1933, 1934, and the first six months of 1935 are shown on pages 18 and 19 of applicant's original application which was filed herein November 29, 1935, and those two pages are incorporated herein by reference.

The data with respect to the kilowatt hours of electric energy and the thousands of cubic feet of gas sold during the years 1935 to 1939 inclusive

and the first six months of 1940 are contained in Schedules (a), (b), (c), (d), and (e), which are attached hereto and made a part hereof.

Neither the applicant nor any of its subsidiaries distributes or sells gas or electricity outside of the State of California or at the border of said State. Neither the applicant nor any of its subsidiaries owns or operates any electric transmission or distribution line or any gas pipe line which delivers or receives gas or electricity outside of or at the border of the State of California. Neither the applicant nor any of its subsidiaries purchase gas or electricity outside of or at the border of the State of California.

8. Financial statements attached.

The consolidated profit and loss statements of applicant and its subsidiaries and the profit and loss statements of applicant and each of its former subsidiaries for the years 1932, 1933, and 1934 and the first six months of 1935 are attached to applicant's aforesaid original application which was filed with the Commission November 29, 1935, and are made a part hereof by reference.

The consolidated profit and loss statements of applicant and its subsidiaries for the years 1935 to 1939 inclusive and the first six months of 1940 are attached hereto and made a part hereof.

The consolidated balance sheet, at December 31, 1939, of applicant and its subsidiaries which are normally consolidated, is contained in applicant's annual report on Form 10K, for the year ending

December 31, 1939, as an answer to item 8. That balance sheet is hereby referred to and incorporated herein.

9. Rule U-3A-2—exemption of holding companies.

From the facts already set forth it appears that applicant comes within the provisions of Rule U-3A-2, subdivision (a), paragraphs (1) and (2). Applicant, in compliance with the provisions of Rule U-3A-2, subdivision (b), filed with the Commission, prior to March 1, 1940, a statement on Form U-3A-2, and has not been notified by the Commission that any substantial question of law or fact exists as to whether or not applicant is within the class of holding companies which the Commission may exempt under Section 3 (a) of the Act, or that the exemption afforded by paragraph (a) of this rule to applicant is or may be detrimental to the public interest or the interest of investors or consumers.

10. Note relating to Vallejo Electric Light and Power Company.

The shares of stock of Vallejo Electric Light and Power Company which are owned by applicant are carried on applicant's books as an investment, and the only income which applicant receives by reason of its ownership of that stock consists of the dividends declared and paid thereon. Applicant, as already stated, disclaims control of Vallejo Electric Light and Power Company and does not consider that that company is a subsidiary of applicant.

Applicant is informed and believes and therefore states that all of Vallejo Electric Light and Power Company's properties used by it in its public utility business consist of one or more substations and an electric distribution system located in the City of Vallejo, State of California, and in the immediate vicinity thereof, and that said Vallejo Electric Light and Power Company purchases from applicant all or substantially all of the electric energy which it distributes. Applicant does not possess and cannot readily obtain the detailed information with respect to Vallejo Electric Light and Power Company and its operation called for by the Commission's Rule U-3A-1, subdivision (b), paragraph (3), and respectfully submits that such detailed information, if provided, would be neither material nor relevant to the determination of the questions presented by this application. Applicant's sale and delivery of electric energy to Vallejo Electric Light and Power Company are regulated by the California Railroad Commission.

11. Note relating to other companies listed under item 4.

The principal assets of Arlington Properties Company, Ltd., are divers parcels of land situate in the State of California which are neither used nor required for use at the present time by applicant in connection with its public utility operations and business. Arlington Properties Company, Ltd., also

owns some shares of Western Canal Company stock and also all issued shares, viz., one thousand shares, of Crystal Lake Company, Ltd.

Crystal Lake Company, Ltd., owns a ranch in Shasta County, California, through which Hat Creek (the source of water supply for the Hat Creek power plants hereinbefore mentioned) flows. It has no other property.

Standard Pacific Gas Line Incorporated owns a pipe line which extends from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County and which is used in transporting natural gas. One-half the capacity of that pipe line is reserved for the use of the applicant, the other half being reserved and used for conveying gas for Standard Oil Company of California and one or more of its subsidiary companies. Standard Pacific Gas Line Incorporated does not distribute or sell any gas at retail or otherwise.

Valley Electrical Supply Company deals in electrical appliances at Fresno and vicinity in the San Joaquin Valley in California. It is not engaged in any public utility business.

Western Canal Company owns and operates an irrigation system in Butte and Glenn Counties, California. It is not engaged in any other business.

San Joaquin Light and Power Corporation is in process of voluntary winding up and dissolution. In 1938 and 1939, it distributed all of its public utility properties and assets to Pacific Gas and Electric Company, and now holds as its only asset

a relatively small sum of money deposited in Wells Fargo Bank and Union Trust Company in San Francisco.

None of the companies mentioned in this note owns any utility assets or is a public utility company within the meaning of those terms as defined in the Public Utility Holding Company Act of 1935.

12. Statement of reasons why applicant and its subsidiaries are entitled, under Section 3 (a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935.

Applicant and every subsidiary thereof are entitled, under Section 3 (a), subdivisions (1) and (2), to exemption from the provisions of the Public Utility Holding Company Act of 1935, because, as appears from the facts stated above,

(A) applicant and every subsidiary company thereof which is a public-utility company and every other subsidiary thereof are "predominantly intrastate in character" and carry on all their public utility business and substantially all their other business within the State of California in which the applicant and every such subsidiary company are organized (Section 3 (a), subdivision (1) of said Act), and

(B) The applicant "is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized" (Section 3 (a), subdivision (2) of said Act).

13. Application as evidence—Rule U-3, paragraph (d).

Pursuant to paragraph (d) of the Commission's Rule U-3, applicant offers in evidence Part A of this application (pages 1-14) entitled: "Statement of Facts in Support of Request for Order Under Section 3 (a), Subdivision (1) and (2)."

PART B. STATEMENT OF FACTS IN SUPPORT OF REQUEST FOR AN ORDER UNDER SECTION 2 (a), SUBDIVISION (8).

1. Name and address of applicant and of specified holding company.

(a) Applicant.

Pacific Gas and Electric Company,
245 Market Street, San Francisco, California.

(b) Specified holding company.

The North American Company,
60 Broadway, New York City, N. Y.

2. Names and addresses of all persons owning of record, or, if known, directly or indirectly controlling or holding with power to vote, more than three per cent of any class of voting securities or more than ten per cent of any other class of securities of applicant, giving, as to each class of securities involved, the amount outstanding and the amount so owned or controlled or held by each such person.

Applicant has only four classes of securities outstanding, viz.,

(a) Common stock, of which there are issued and outstanding 6,261,273 shares of the par value of $25 each;

(b) Preferred stock, of which there are now issued and outstanding 5,370,822 shares of the par value of $25 each;

(c) First and Refunding Mortgage Bonds issued by applicant, of which there are now outstanding bonds of the aggregate par value of $277,681,000, including bonds of the par value of $17,000 heretofore called for redemption but not yet presented for payment; and ,

(d) Bonds issued by San Joaquin Light and Power Corporation, the payment of which has been assumed by applicant and of which there are now outstanding bonds of the aggregate par value of $9,032,000, including bonds of the par value of $59,000 now held in applicant's treasury.

Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder of record is entitled to one vote for each share of stock held. At any election of directors, each shareholder entitled to vote may cumulate his votes and give to one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which his shares are entitled, or to distribute his votes on the same principle among as many candidates as he chooses. Candidates receiving the highest number of

votes up to the number of directors to be elected shall be elected.

Holders of applicant's bonds have no voting rights.

The names and addresses of all persons owning of record, or, if known, owning beneficially or directly or indirectly controlling or holding with power to vote more than three per cent of any class of applicant's voting securities (i. e., issued shares of capital stock) are as follows:

Owner of Record	Class of Security	Number of Shares Owned
The North American Company 60 Broadway New York City, N. Y.	Common Stock	2,002,570
Beneficial Owner		
The North American Company 60 Broadway New York City, N. Y.	" "	57,100
Owner of Record		
Standard Gas and Electric Company 420 Lexington Avenue Chicago, Illinois	" "	200,420

The percentage of the total voting power represented by the shares of common stock owned by The North American Company, as owner of record and as beneficial owner, is 17.71 per cent.

The percentage of the total voting power represented by the shares of common stock owned by Standard Gas and Electric Company is 1.72 per cent.

To the best of applicant's knowledge and belief, no person or company owns so much as 10 per cent of applicant's outstanding bonds.

3. Names of the officers and directors of applicant and also the names of those officers and directors of applicant who are officers, directors, nominees or appointees of any holding, public-utility or investment company other than applicant.

Name	Office Held
Allen L. Chickering	Director
W. W. Crocker	"
J. F. Fogarty	"
Herbert C. Freeman	"
Norman B. Livermore	"
Chas. K. McIntosh	"
John D. McKee	"
C. O. G. Miller	"
Henry D. Nichols	"
S. H. Palmer	"
James B. Black	President and Director
P. M. Downing	Vice-President, General Manager and Director
John P. Coghlan	Vice-President and Assistant to the President and Director
D. H. Foote	Vice-President and Secretary-Treasurer and Director
A. E. Wishon	Vice-President and Assistant General Manager and Director
W. G. Vincent	Vice-President and Executive Engineer
R. E. Fisher	Vice-President in Charge of Public Relations and Sales
E. W. Hodges	Comptroller

Applicant is informed and believes and therefore states that the only officers or directors of applicant above named who are officers, directors, nominees or appointees of any holding or public utility company (as defined in the Public Utility Holding Company Act of 1935), other than applicant and its subsidiaries, are the following:

(1) Mr. Chickering, who is a vice-president and director of San Diego Gas and Electric Company;

(2) Mr. Coghlan, who is a director of Vallejo Electric Light and Power Company;

(3) Mr. Crocker, who is a director of Pacific Lighting Corporation;

(4) Mr. Miller, who is Chairman of the Board and a director of Pacific Lighting Corporation and also a director of the latter company's subsidiaries, Southern California Gas Company and Southern Counties Gas Company of California;

(5) Mr. Fogarty, who is Chairman of the Executive and Finance Committee and a director of The North American Company and also is an officer of other companies;

(6) Mr. Freeman, who is a vice-president and a director of The North American Company, and also is an officer of other companies.

Mr. James B. Black was elected president of applicant on November 20, 1935. Prior thereto and while he was a director of applicant, Mr. Black was a vice-president of The North American Company,

a vice-president and a director of Western Power Corporation, and a director of North American Utility Securities Corporation. On November 20, 1935, and prior to his election as president of applicant, Mr. Black tendered his resignation as vice-president of The North American Company, vice-president and director of Western Power Corporation, and director of North American Utility Securities Corporation, and severad all connection and relationship with said companies and their subsidiaries.

The board of directors of applicant, as provided by its articles of incorporation, consists of fifteen members.

4. A list and a brief statement of the nature of any contracts, agreements, or other arrangements, presently in force or in force at any time since December 31, 1933, providing for the furnishing of any management, supervision, or substantial services of a similar nature, to applicant by any company.

There are no such contracts, agreements or other arrangements.

5. The amount, interest rate, and name of lender, with respect to any loans or advances made to applicant by any company, as presently outstanding and as outstanding at each of the last three annual balance-sheet dates, excluding unsecured bank loans made in the ordinary course of business.

There are no such loans or advances. For bonds outstanding see ante item 2.

6. A brief description of any factors relevant to the question whether or not applicant directly or indirectly exercises control or a controlling influence over any other company.

Applicant exercises control over the following companies named in answer to item 4 of part A of this application, viz., Arlington Properties Company, Ltd., Crystal Lake Company, Ltd., San Joaquin Light and Power Corporation, Valley Electrical Supply Company, and Western Canal Company. Applicant does not, directly or indirectly, exercise control or a controlling influence over Standard Pacific Gas Line Inc., or Vallejo Electric Light and Power Company, or any other company except those mentioned in the last preceding sentence. For further particulars concerning the companies mentioned in this item 6, see Part A of this application, items 4, 10 and 11.

7. Brief statement of any factors relevant to the question whether or not control or a controlling influence, as described in clauses (i), (ii) or (iii) of Section 2(a) (8) is exercised directly or indirectly by any other company (including companies more than one degree removed from applicant) with respect to applicant or with respect to any other company through applicant.

(a) Applicant was organized in October, 1905, under the laws of the State of California, at the instance and under the direction of a small group of men who were large stockholders of California Gas

and Electric Corporation (a California corporation). Their primary purpose in organizing applicant was to acquire the properties and business of San Francisco Gas and Electric Company (also a California corporation), and to consolidate them with the properties and business of said California Gas and Electric Corporation. Soon after its organization, applicant acquired nearly all of the issued shares of capital stock of said California Gas and Electric Corporation and more than ninety per cent of the stock of said San Francisco Gas and Electric Company. Before January 1, 1912, applicant had acquired the business and all of the operating properties and other physical assets of said San Francisco Gas and Electric Company and California Gas and Electric Corporation; and, ever since its acquisition of those properties, applicant has been predominantly an operating public utility corporation and its public utility operations have been confined to the State of California.

(b) During the entire period of its existence, the members of applicant's board of directors, with few exceptions, have been residents of San Francisco and its vicinity, and have owned or represented substantial stock interests in applicant.

(c) On or about March 29, 1930, applicant entered into a contract bearing that date with said The North American Company (a New Jersey corporation) whereby applicant agreed to purchase from said The North American Company's subsidiary, Western Power Corporation (a New York

corporation), a majority of the issued and outstanding shares of stock of Great Western Power Company of California and San Joaquin Light and Power Corporation and all of the issued and outstanding shares of Midland Counties Public Service Corporation (all these being California corporations), and agreed to issue, in exchange therefor, upon the terms and conditions specified in said contract, 1,825,000 shares of applicant's common stock of the par value of $25 each to said Western Power Corporation. This contract was submitted to the Railroad Commission of the State of California by an application designated in that commission's records as No. 16,415. After a public hearing, the Railroad Commission of the State of California rendered its Decision No. 22,432 whereby it authorized the applicant to acquire the shares of stock which it had agreed to purchase, and to issue the shares of stock which it had agreed to issue, by the said contract of March 29, 1930. Pursuant to that decision, the transactions thereby authorized were consummated on or about June 12, 1930, by the transfer to applicant of the shares which it had agreed to purchase and by applicant's issue of 1,825,000 shares of its common stock to said Western Power Corporation. Applicant's acquisition of the stocks purchased under its said contract of March 29, 1930, with The North American Company was the first step in the execution of a plan already formed by applicant to acquire, and to consolidate with its own, the business and the electric plants, properties, and other

assets of said San Joaquin Light and Power Corporation, said Midland Counties Public Service Corporation, and said Great Western Power Company of California and the subsidiaries of the last named company. Applicant's said plan was disclosed to said Railroad Commission in said Application No. 16,415. The electric transmission and distribution systems of said Great Western Power Company of California and its subsidiaries in many places paralleled and duplicated those belonging to applicant. In pursuance of that plan, applicant acquired additional shares of stock of Great Western Power Company of California and San Joaquin Light and Power Corporation, and thereafter effected the winding up and voluntary dissolution of Great Western Power Company of California and all of its subsidiaries, and the voluntary winding up and dissolution of Midland Counties Public Service Corporation. San Joaquin Light and Power Corporation is now in process of winding up, and the completion of its proceedings for winding up and dissolution only awaits the determination of the rights of minority stockholders owning 353 shares (less than one-half of one per cent) of its common stock. All of the plants and properties of said Midland Counties Public Service Corporation and said Great Western Power Company of California and its subsidiaries and all of the plants, properties and other assets of San Joaquin Light and Power Corporation, except a sum of money reserved pending the determination of the rights of its minority

shareholders, have been distributed to applicant since January 1, 1936, under authority of orders made by said Railroad Commission. The results of the transactions described in this paragraph have been substantial economies in the management and operation of the properties formerly owned by San Joaquin Light and Power Corporation, Midland Counties Public Service Corporation, and Great Western Power Company of California and the latter's subsidiaries, the prevention of further duplication of electric power facilities, and substantial reduction of fixed charges by refunding outstanding obligations at lower interest rates.

(d) At May 31, 1930, and before the issue of said 1,825,000 shares of common stock pursuant to said contract of March 29, 1930, applicant had issued and outstanding stock as follows: 3,845,341 shares of common stock and 3,479,927 shares of preferred stock.

(e) Prior to the issuance by applicant of said 1,825,000 shares of its common stock to Western Power Corporation, former subsidiary of The North American Company, neither The North American Company nor any subsidiary thereof owned or held of record any share of applicant's issued stock.

(f) At no time have there been more than three members of applicant's board of directors who were appointed or elected by, or at the instance or upon the suggestion of, The North American Company and its subsidiaries, or any of them. At all times since its incorporation in October, 1905, except

short periods when there were temporary vacancies, applicant's board of directors has consisted of fifteen members.

(g) Applicant has never had any "service," "sales," or "construction contract" within the meaning of those terms as defined in subdivisions 19, 20, and 21 of Section 2(a) of the Public Utility Holding Company Act of 1935, with The North American Company or any subsidiary of The North American Company, or with any "holding company" or any "affiliate" within the meaning of those terms as defined in said act.

(h) Ever since its incorporation on October 10, 1905, applicant has been and now is an independent California public utility company managed and controlled by its board of directors, and ever since March 23, 1912, has been subject to regulation by the Railroad Commission of the State of California under the Public Utilities Act of that State.

(i) Neither The North American Company nor any subsidiary of said The North American Company has ever exercised, or attempted to exercise, either directly or indirectly, control or a controlling influence over the applicant or over the management or policies of applicant or any of applicant's subsidiaries.

(j) Never at any time since applicant issued shares of its stock to said Western Power Corporation on or about June 12, 1930, has either the North American Company or any of its subsidiaries received, either directly or indirectly, any money

or other valuable consideration from applicant or any of the latter's subsidiaries except the regularly declared dividends upon the common stock of applicant owned by The North American Company or its subsidiaries.

8. Statement of reasons why applicant is entitled to an order, under Section 2(a), subdivision (8) of said Act, declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company.

Applicant is entitled to an order under said Section 2(a), subdivision (8), declaring that neither applicant nor any of its subsidiaries is a subsidiary of The North American Company because, as appears from the facts stated above,

(i) applicant is not controlled, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever;

(ii) applicant is not an intermediary company through which such control of another company is exercised; and

(iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by The North American Company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the

public interest or for the protection of investors or consumers that the applicant be subject to any of the obligations, duties or liabilities imposed by said Holding Company Act upon subsidiary companies of holding companies.

9. Application as evidence — Rule U-3 paragraph (d)

Pursuant to paragraph (d) of the Commission's Rule U-3, applicant offers in evidence Part B of this application entitled: "Statement of Facts in Support of Request for an Order Under Section 2(a), Subdivision (8)," contained in the foregoing pages 15 to 25.

PRAYER

Wherefore, Pacific Gas and Electric Company prays (A) for an order, under Section 3(a), subdivisions (1) and (2), of the Public Utility Holding Company Act of 1935, exempting it and all of its subsidiaries from the provisions of said Act, and

(B) for an order, under Section 2(a), subdivision (8), of said Act, declaring that neither said Pacific Gas and Electric Company nor any of its subsidiary companies is a subsidiary of The North American Company.

Dated: San Francisco, California, October 31, 1940.

Corporate Seal
of
Pacific Gas and Electric
Company

PACIFIC GAS AND
ELECTRIC COMPANY
By JAMES B. BLACK
President

Attest:

D. H. FOOTE
Secretary

WM. B. BOSLEY
Counsel for Pacific Gas and
Electric Company

State of California,
City and County of San Francisco—ss.

James B. Black, being first duly sworn, deposes and says: That he is an officer, viz., the President, of Pacific Gas and Electric Company, a California corporation; that as such President he has executed the foregoing application for and on behalf of said corporation and in its name; that he has caused his execution of said application to be attested by the Secretary of said corporation, and the corporate seal of said corporation to be thereto affixed; that he has read the foregoing application and knows the contents thereof; and that all of the statements

therein contained are true to the best of his knowledge, information, and belief.

JAMES B. BLACK

Subscribed and sworn to before me this 1st day of November, 1940.

FRANK PANTER

Notary Public of the State of California in and for the City and County of San Francisco. My commission expires November 13, 1942.

[Notarial Seal]

COPY BOUND VERTICALLY

(a) Sales by Applicants and Each of Their Subsidiaries to Retail Consumers

Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	Kwh. Electricity Sold					
P. G. & E. Co.	1,774,706,114	2,611,203,827	2,917,264,725	2,939,852,376	4,150,854,291	2,024,169,847
Sierra & S. F. Power Co.	193,940,374	41,012,570	0			
G.W.P. Co. of Calif.	525,027,841	140,930,619	0			
Napa Valley Elec. Co.	3,531,367	871,760	0			
Mt. Shasta Power Co.	1,489,439	0	0			
S. J. L. & P. Corp.	549,086,513	633,771,378	723,712,216	685,795,106		
M. C. P. S. Co.	75,361,301	85,845,544	86,642,556	86,362,359		
Total Sales to Consumers	3,123,142,949	3,513,635,698	3,727,619,497	3,712,009,841	4,150,854,291	2,024,169,847
	M-Cf. Gas Sold					
P. G. & E. Co.—Mfg.	509,867.4	534,110.1	590,972.6	621,142.4	227,566.4	120,842.3
Natural	43,416,299.7	48,627,724.5	53,932,050.2	56,459,489.0	69,296,971.0	37,062,144.1
Modesto Gas Co.— Natural	701,475.9	0	0	0	0	
S. J. L. & P. Co.— Natural	3,762,631.5	4,008,253.0	4,694,536.8	5,013,335.3	0	
Total Sold to Consumers	48,390,274.5	53,170,087.6	59,217,559.6	62,093,966.7	69,524,537.4	37,182,986.4

Note: B.T.U. Heat Content: Natural Gas principally 1150 to 1180 Btu. per cubic foot, minor quantities served at approximately 1000, 1015 and 1040 Btu. per cubic foot; Manufactured Gas 540 Btu. per cubic foot.

(b) Sales by Applicants and Each of Their Subsidiaries Wholesale to Other Companies and Municipalities for Resale

Name of Company	Kwh. Electricity Sold					
	1935	1936	1937	1938	1939	First Six Months 1940
P. G. & E. Co.	136,788,740	161,305,687	191,808,136	180,940,367	258,713,369	112,858,173
Sierra & S. F. Power Co.	2,114,548	269,720	0			
G.W.P. Co. of Calif.	26,206,801	7,282,076	0			
Napa Valley Elec. Co.	0	0	0			
Mt. Shasta Power Corp.	0	0	0			
S. J. L. & P. Corp.	11,232,500	12,181,183	14,469,975	11,964,777		
M. C. P. S. Co.	1,501,359	1,703,645	1,905,829	1,950,884		
Total Sold to Other Companies & Municipalities for Resale	177,843,948	182,742,311	208,183,940	194,856,028	258,713,369	112,858,173
	M-Cf. Natural Gas Sold (1150 to 1180 B.t.u.)					
P. G. & E. Co.	273,567.4	269,422.2	313,770.8	383,045.9	410,250.0	241,747.0
Modesto Gas Co.	0	0				
S. J. L. & P. Corp.	0	0				
Total Sold to Other Companies for Resale	273,567.4	269,422.2	313,770.8	383,045.9	410,250.0	241,747.0

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(c) Total Sales by Applicants and Each of Their Subsidiaries (Sum of (a) and (b) Above)

Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	Kwh. Electricity Sold					
P. G. & E. Co.	1,911,494,854	2,772,509,514	3,109,072,861	3,120,792,743	4,409,567,660	2,137,028,020
Sierra & S. F. Power Co.	196,054,922	41,282,290	0			
G.W.P. Co. of Calif.	551,234,642	148,212,695	0			
Napa Valley Elec. Co.	3,531,367	871,760	0			
Mt. Shasta Pr. Corp.	1,489,439	0	0			
S. J. L. & P. Corp.	560,319,013	645,952,561	738,182,191	697,759,883		
M. C. P. S. Co.	76,862,660	87,549,189	88,548,385	88,313,243		
Consol. System Sales	3,300,986,897	3,696,378,009	3,935,803,437	3,906,865,869	4,409,567,660	2,137,028,020
	M-Cf. Gas Sold					
P. G. & E.—Mfd.	509,867.4	534,110.1	590,972.6	621,142.4	227,566.4	120,842.3
Natural	43,689,867.1	48,897,146.7	54,245,821.0	56,812,534.9	69,707,221.0	37,303,891.1
Modesto Gas Co.—Natural	701,475.9	0				
S. J. L. & P. Co.—Natural	3,762,631.5	4,008,253.0	4,694,536.8	5,013,335.3	0	
Consol. System Sales	48,663,841.9	53,439,509.8	59,531,330.4	62,477,012.6	69,934,787.4	37,424,733.4

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(d) Sales to Sierra Pacific Power Company at Summit, California (which are included in (b) above)

	Kwh. Sold					
Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	31,821,899	14,912,193	22,655,717	12,254,477	9,558,190	6,260,312

(e) Kilowatt-hours purchased by Pacific Gas and Electric Company and its Subsidiary, Mt. Shasta Power Corporation, from the California Oregon Power Company at Delta, California

	Kwh. Purchased					
Name of Company	1935	1936	1937	1938	1939	First Six Months 1940
	259,477,400	261,158,200	258,606,594	259,108,000	261,009,822	128,703,238

PACIFIC GAS AND ELECTRIC COMPANY

RESOLUTION ADOPTED BY EXECUTIVE COMMITTEE OF THE BOARD OF DIRECTORS

Be it resolved by the Executive Committee of the Board of Directors of Pacific Gas and Electric Company that the acts of J. B. Black, the President, and D. H. Foote, the Secretary, of this corporation in executing, for and on behalf of this corporation and under its corporate seal, and the acts of William B. Bosley, the General Counsel of this corporation, in signing and filing with the Securities and Exchange Commission an amended and supplemental application, dated October 31, 1940, praying for an order, under Section 3 (a), subdivisions (1) and (2), and an order, under Section 2(a), subdivision (8), of the Public Utility Holding Company Act of 1935, be and they are hereby approved and ratified as the acts of this corporation.

I, D. H. Foote, do hereby certify that I am the Secretary of Pacific Gas and Electric Company, a corporation organized and existing under the laws of the State of California; that the above and foregoing is a full, true and correct copy of a resolution which was duly and regularly adopted by the Executive Committee of the Board of Directors of said company at a meeting of the said Committee which was duly and regularly called and held at the office of said company on the 4th day of November, 1940;

that the said resolution has never been amended, revoked or repealed, but is still in full force and effect; that the following is a true and correct copy of Section 3 of Article IV of the By-Laws of said corporation relating to the powers of said Executive Committee:

"Section 3. The Executive Committee of the Board of Directors, subject to the provisions of law, may, during the intervals between sessions of the Board of Directors, exercise any of the powers and perform any of the functions and duties of the Board of Directors; but the Board of Directors by resolution duly adopted, may at any time by the affirmative vote of two-thirds of its members withdraw or limit all or any of the powers of the Executive Committee.";

and that the Board of Directors of said corporation has not passed a resolution limiting the powers of said Executive Committee:

Witness my hand and the seal of said corporation hereunto affixed this 4th day of November, 1940.

D. H. FOOTE
Secretary of Pacific Gas and Electric Company

United States of America

Before the Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 4th day of September, A. D. 1940.

In the Matter of Pacific Gas and Electric Company and Great Western Power Company of California. File No. 31-55.

NOTICE OF AND ORDER FOR HEARING

A joint application pursuant to the Public Utility Holding Company Act of 1935, having been duly filed with this Commission by the above-named parties;

It is ordered that a hearing on such matter under the applicable provisions of said Act and the rules of the Commission thereunder be held on October 21, 1940, at ten o'clock in the forenoon of that day, at the Securities and Exchange Building, 1778 Pennsylvania Avenue, NW., Washington, D. C. On such day the hearing-room clerk in room 1102 will advise as to the room where such hearing will be held. At such hearing, if in respect of any declaration, cause shall be shown why such declaration shall become effective.

It is further ordered that Richard Townsend or any other officer or officers of the Commission designated by it for that purpose shall preside at the hearings in such matter. The officer so designated

to preside at any such hearing is hereby authorized to exercise all powers granted to the Commission under section 18(c) of said Act and to a trial examiner under the Commission's Rules of Practice.

Notice of such hearing is hereby given to such declarant or applicant and to any other person whose participation in such proceeding may be in the public interest or for the protection of investors or consumers. It is requested that any person desiring to be heard or to be admitted as a party to such proceeding shall file a notice to that effect with the Commission on or before October 15, 1940.

The matter concerned herewith is in regard to a joint application for an order under Section 2(a)(8) of said Act declaring that neither Pacific Gas and Electric Company nor any of its subsidiaries are subsidiaries of The North American Company and for an order under Sections 3(a)(1) and (2) of said Act exempting said applicants and their subsidiaries from the provisions imposed by said Act upon holding companies and every subsidiary company thereof.

By the Commission.

FRANCIS P. BRASSOR
Secretary
Per ORVAL L. DU BOIS

[Title of Commission and Cause.]

APPLICATION FOR THE TAKING OF DEPOSITIONS

Pacific Gas and Electric Company, one of the applicants in the above-entitled matter hereinafter called "Applicant"), respectfully shows:

I.

At the hearing on the above-entitled matter, to be held on October 21, 1940, at 10 o'clock a. m., at the Securities and Exchange Building, Washington, D. C., the Applicant proposes to produce as witnesses the following persons, to-wit:

Name and Residence	Office Held with Applicant
Allen L. Chickering, San Francisco	Director
W. W. Crocker, San Francisco	"
James F. Fogarty, New York	"
Herbert C. Freeman, New York	"
Norman B. Livermore, San Francisco	"
John D. McKee, San Francisco	"
C. O. G. Miller, San Francisco	"
Silas H. Palmer, San Francisco	"
James B. Black, San Francisco	President and Director

Name and Residence	Office Held with Applicant
P. M. Downing, San Francisco	Vice-President, General Manager and Director
A. Emory Wishon,	Vice-President, Assistant General Manager and Director
E. W. Hodges, San Francisco	Comptroller

II.

Applicant desires to take the depositions of the following persons, to-wit:

Name and Residence	Office Held with Applicant
Charles K. McIntosh, San Francisco	Director
Henry D. Nichols, San Francisco	"
John P. Coghlan, San Francisco	Vice-President and Director
D. H. Foote, San Francisco	Vice-President, Secretary-Treasurer and Director

III.

The time and place proposed for the taking of said depositions are as follows, to-wit:

November 12, 1940, at 10 o'clock a. m., at San Francisco, California.

IV.

The matters concerning which it is expected that each of the persons named in paragraph II hereof will testify are as follows:

1. The securities of the Applicant owned by him and his family, or otherwise represented by him.

2. The securities of The North American Company and its subsidiaries, if any, owned by him and his family, or otherwise represented by him.

3. As to his business or profession, and business connections.

4. As to the circumstances concerning his election as a director of the Applicant.

5. As to any conversations or correspondence with the officers and directors of The North American Company.

6. As to his participation in the affairs of the Applicant and the meetings of its Board of Directors.

7. Generally as to facts concerning the policies, management and control of the Applicant.

8. In the case of Mr. Coghlan, the facts concerning the Applicant's acquisition of its stock interest in Vallejo Electric Light and Power Company, and concerning the management and control of the company last mentioned.

V.

The reasons why said depositions should be taken are as follows:

1. Mr. McIntosh is the Chairman of the Board of Directors of The Bank of California, N. A., and is now out of the State of California and will not return until October 16, 1940. Applicant believes and therefore states that it will be highly inconvenient, if not impossible, in view of Mr. McIn-

tosh's duties as Chairman of the Board of Directors of The Bank of California, for him to make a trip to testify at the hearing in Washington, D. C., which hearing will take place shortly after his return to San Francisco.

2. Mr. Nichols is uncertain as to his ability to attend the hearing in Washington, D. C., due to the illness of his wife.

3. In view of the fact that three of the Applicant's principal executive officers, namely, Messrs. Black, Downing, and Wishon, and its Comptroller, Mr. Hodges, propose to attend the hearing in Washington, D. C., the Applicant believes that Messrs. Coghlan and Foote should remain at the Applicant's offices in San Francisco in order to facilitate the transaction of the Applicant's business.

VI.

The present application is made without prejudice to the right of the Applicant to take the deposition of any of the persons mentioned in paragraph I in case any of such persons shall be unable to appear at the hearing in Washington, D. C.

Wherefore the Applicant requests the Securities and Exchange Commission to issue an order for the taking of the depositions of the persons named in paragraph II, and specifying the time when, the place where, and the designated officer before whom, said persons are to testify.

Dated: San Francisco, Calif., October 2, 1940.

PACIFIC GAS AND
ELECTRIC COMPANY
By J. B. BLACK
President
245 Market St., San Francisco, Cal.

Attest:

D. H. FOOTE
Secretary
HERMAN PHLEGER
ROBERT H. GERDES
WM. B. BOSLEY
Counsel for Pacific Gas and Electric Company
245 Market St., San Francisco, Cal.

State of California,
City and County of San Francisco—ss.

The undersigned being duly sworn deposes and says that he has duly executed the attached Application for the Taking of Depositions, dated October 2, 1940, for and on behalf of Pacific Gas and Electric Company; that he is the president of such company, and that no action by stockholders, directors, and other bodies is necessary to authorize deponent to execute and file such instrument. Deponent further says that he is familiar with such instrument, and the contents thereof, and that the facts therein

set forth are true to the best of his knowledge, information and belief.

J. B. BLACK

Subscribed and sworn to before me this 3rd day of October, 1940.

FRANK PANTER

Notary Public of the State of California in and for the City and County of San Francisco. My commission expires November 13, 1942.

[Title of Commission and Cause.]

ORDER CHANGING TIME AND PLACE OF HEARING AND DESIGNATING DIFFERENT TRIAL EXAMINER.

The Commission having on the 4th day of September, 1940, issued a Notice Of and Order for Hearing in the above matter to be held on the 21st day of October, 1940 at the Securities and Exchange Building, 1778 Pennsylvania Avenue, N. W., Washington, D. C. and having by the same order designated Richard Townsend, an officer of the Commission, to preside at said hearing; and

The Commission being now of the opinion that due to the fact that most of the prospective witnesses as well as numerous holders of applicant's securities and other interested persons reside in and near San Francisco, California that said hearing should be held at that place;

It is therefore ordered that the Notice Of and

Order for Hearing heretofore issued in this matter be modified;

It is further ordered that said hearing be held on the 12th day of November, 1940, at 10:00 o'clock in the forenoon of that day, at the Regional Office of the Securities and Exchange Commission located at 625 Market Street in the City of San Francisco, California; that John Clarkson or any other officer or officers of the Commission designated by it for that purpose shall preside at said hearing; and that after the commencement of said hearing at said time and place, the same may be continued by the Trial Examiner to such further date and to such other place as the circumstances may warrant.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

In the Matter of the Joint Application to Securities and Exchange Commission of Pacific Gas and Electric Company and its Subsidiaries Great Western Power Company For an Order that They Are not Subsidiaries of The North American Company. (File 31-55)

Edward P. E. Troy
Being Duly Sworn
Says:

I am 73 years of age. I have been a resident and citizen of San Francisco, California, where I was born in 1867, and have lived all my life, except two

years, when I was 17 to 19 years of age. At that time my father lived in San Rafael, Marin County, California, from whence we commuted every day to the "city".

I have been a taxpayer in my city for more than fifty years. I am a consumer of gas and electricity furnished by Pacific Gas and Electricity.

I have been writing on public ownership, public utility questions, taxation and other economic questions for more than fifty years. I have made particular studies of the reports, trials and other material relating to Pacific Gas and Electric Company for more than thirty years.

I have always endeavored to let the people of California and my city know the truth about this Company and its statements. One such matter which I have been at work on for some months is the statement being publically broadcast by P. G. and E. that it has reduced gas and electric rates $5,000,000.00 during the past month. There is not a word of sworn testimony or evidence open to the public that will verify that assertion, nor any figures or data. My information is that no sworn testimony was taken by any public body in that matter.

I desire to participate in this proceeding solely for the interest of consumers and the public interest of my city and State. I believe that the only way in which such interests, and of investors as well, can be protected is for your Securities and Ex-

change Commission to retain as full and complete control over these companies as is possible.

EDWARD P. E. TROY.

State of California
City and County of San Francisco.

Subscribed and sworn to before me this 13th day of November, 1940.

NELL O. DAY,
Notary Public in and for the City and County of San Francisco, State of California. My Commission Expires March 26, 1944.

[Title of Commission and Cause.]

ORDER DENYING INTERVENTION BUT PERMITTING LIMITED PARTICIPATION IN HEARING.

The Securities and Exchange Commission having on the 4th day of September, 1940, issued its Notice of and Order for Hearing in the above matter;

Edward P. E. Troy having filed an application to intervene in said proceedings, representing that he is a taxpayer of the City of San Francisco and a consumer of gas and electricity furnished by the above named company;

It not appearing from the facts alleged in said application that the applicant has sufficient interest in said proceeding to render his admission as

a party thereto in the public interest or for the protection of investors or consumers;

It is ordered that said application to intervene be, and the same hereby is denied without prejudice to the right of said applicant to renew his application for leave to intervene and to be made a party to said proceeding at a future date;

It is further ordered that the said Edward P. E. Troy shall be permitted to participate at any hearing in this matter to the extent of introducing evidence and cross-examining witnesses; provided, however, that such evidence and cross-examination are competent, relevant and material to the issues involved.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

[Title of Commission and Cause.]

TESTIMONY

Room 403, Civic Auditorium Building,
San Francisco, California,
Tuesday, November 12, 1940.

Met, pursuant to notice of the Commission, at 10:00 o'clock a. m.

Before:

JOHN G. CLARKSON, Trial Examiner.

Appearances:

E. M. CALKIN, Attorney for the Securities and Exchange Commission.

W. B. BOSLEY, ROBERT H. GERDES and HERMAN PHLEGER, 245 Market Street, San Francisco, California, Attorneys for the Applicant.

IRA H. ROWELL, 514 State Building, San Francisco, California, appearing for the Railroad Commission of the State of California. [1*]

PROCEEDINGS

The Examiner: This is a hearing in the matter of the application of the Pacific Gas and Electric Company, et al., under Section 2 (a) (8) and 3 (a) (1) and (2) of the Public Utility Holding Company Act of 1935.

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*Page numbering appearing at top of page of original Reporter's Transcript.

Pursuant to order of the Securities and Exchange Commission on October 10, 1940, the hearing previously ordered to be held in Washington was changed and the Commission directed the hearing be held on the 12th of November, 1940, at 10:00 o'clock in the forenoon at the Regional Offices of the Securities and Exchange Commission, San Francisco, California, and designated me as the Trial Examiner.

In view of the fact that the facilities at the offices of the Regional Office of the Commission were inadequate, arrangements were made and authorized by the Commission to conduct the hearing here, to which point I ordered it be continued from 625 Market Street.

The hearing is now open.

Have you the appearances of all the parties, Mr. Reporter?

The Reporter: I think so.

The Examiner: Miss Esther Calkin represents the Securities and Exchange Commission.

Mr. Herman Phleger represents the Applicant.

I do not know whether there are any other appearances or not. [2]

Mr. Bosley: I will state the appearances for the Applicant. The appearances are myself, William B. Bosley, counsel for the Pacific Gas and Electric Company, Mr. Herman Phleger and Mr. Robert H. Gerdes.

Mr. Phleger and Mr. Gerdes will take the active lead in presenting the evidence and the case generally.

The Examiner: Thank you.

Mr. Rowell: The Railroad Commission of the State of California, by its attorney, Ira H. Rowell, did not deem it appropriate to ask to intervene in this proceeding, but would like this opportunity of presenting a memorandum in respect to the jurisdiction of the Commission and the authority exercised heretofore.

Miss Calkin: I believe it would be more proper to get the order authorizing this proceeding in evidence first. It is a preliminary matter.

The Examiner: The record will note, Mr. Rowell, that you have appeared as a representative of the Railroad Commission and at an appropriate time we will be glad to receive your statement.

Miss Calkin: I offer in evidence as Commission's Exhibit No. 1, the notice of and order for hearing in the matter of the Pacific Gas and Electric Company and the Great Western Power Company of California, File No. 31-55, dated September 4, 1940.

[3]

I wish to state for the record that that order was published in the Federal Register for Friday, September 6, 1940, page 3587, Volume 5, No. 174, and was released to the press by Holding Company Release Act, Release No. 2276.

I also wish to offer in evidence as Commission's Exhibit No. 2 an order changing the time and place of hearing and designating a different Trial Examiner, dated October 10, 1940 in the same proceeding, and I will state for the purpose of the record that

this order was released to the press by Holding Company Act Release No. 2325.

I would like to ask that these two releases be marked as Commission's Exhibits 3 and 4; Release No. 2276 being Exhibit No. 3 and Release No. 2325 being Commission's Exhibit No. 4.

I offer Commission's Exhibits 1 to 4 inclusive in evidence at this time.

The Examiner: Without objection the documents as described will be received in evidence respectively as Commission's Exhibits 1, 2, 3 and 4.

(The notice of and order for hearing referred to above was marked Commission's Exhibit No. 1 and received in evidence.)

(The order changing time and place and designating new Trial Examiner referred to above was marked Commission's Exhibit No. 2 and received in evidence.) [4]

(Release No. 2276 referred to above was marked Commission's Exhibit No. 3 and received in evidence.)

(Release No. 2325 referred to above was marked Commission's Exhibit No. 4 and received in evidence.)

Miss Calkin: Nothing further for the Commission at this time.

The Examiner: All right, Mr. Rowell.

Mr. Rowell: If it is appropriate then, Mr. Commissioner, I would like to offer in evidence the original of the memorandum to which I referred.

The Examiner: Have you seen that, Mr. Phleger?

Mr. Phleger: Yes. Mr. Rowell gave me a copy.

The Examiner: Have you seen it, Miss Calkin?

Miss Calkin: No objection. I haven't had an opportunity to read it, but I have no objection.

Mr. Rowell: It might be appropriate also to have available a copy of the Public Utilities Act of the State of California.

I also have a copy here of the Commission's Uniform System of Accounts covering electric corporations, and its Uniform System of Accounts covering gas corporations.

If the Commission so desires I will be glad to leave these with you.

The Examiner: If you will. I think that they would be helpful to the staff of the Commission in considering this [5] matter.

Mr. Phleger: It was our intention to introduce in evidence the latter two items and I suggest they might as well be introduced in evidence now.

Miss Calkin: No objection.

The Examiner: We will keep them and at the appropriate time have them numbered in accordance with the plan you have in presenting your case.

Mr. Phleger: Do I understand that the statement of the Railroad Commission has been admitted in evidence? If so, what is the exhibit number?

The Examiner: Do you want that marked as a Commission exhibit, or what are your desires in the matter?

Mr. Phleger: I assume it should be marked a Railroad Commission exhibit.

Miss Calkin: The Railroad Commission hasn't intervened, but they have made an appearance and I think the record should show it was introduced by counsel for the Railroad Commission. I think that would be their only exhibit.

The Examiner: The statement will be received in evidence and marked RC No. 1.

(The statement of the Railroad Commission above referred to was marked RC Exhibit No. 1.)

Mr. Phleger: And the Public Utilities Act will be RC No. 2? [6]

The Examiner: Yes; RC No. 2.

(The copy of Public Utilities Act above referred to was marked RC Exhibit No. 2 and received in evidence.)

Mr. Phleger: The Uniform System of Accounts——

The Examiner: I thought you were going to introduce those.

The Uniform System of Accounts for electric corporations will be received in evidence and marked RC No. 3.

The Uniform System of Accounts for gas corporations will be received and marked RC No. 4.

(The Uniform System of Accounts for electric corporations was marked RC Exhibit No. 3 and received in evidence.)

(The Uniform System of Accounts for gas corporations was marked RC Exhibit No. 4 and received in evidence.)

Mr. Phleger: I take it there is no objection on the part of the Commission.

The Examiner: I think Miss Calkin has indicated she has no objection.

Mr. Phleger: All right.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [7]

Mr. Phleger: The applicant will offer in evidence the original application of the Applicant filed November 29, 1935, and I ask that it be marked Applicant's Exhibit No. A.

Miss Calkin: I think it would be better to mark them all 1, 2, 3, and so on, designating them as Commission's exhibit or Applicant's exhibit.

Mr. Phleger: That is all right with me. I asked the Examiner and he suggested that the Applicant's exhibits be marked A, B, C and so on.

The Examiner: I indicated the Applicant's exhibits would be letters, rather than numbers. But if you prefer to have them numbered it will be all right.

Miss Calkin: If there are to be a number of exhibits I think it would be better to have them numbered instead of lettered.

Mr. Bosley: I think we might run out of letters.

The Examiner: I have no objection. We could go through the alphabet several times of course.

Applicant's Exhibit No. 1 is received without objection.

(The original application above referred to was marked Applicant's Exhibit No. 1 and received in evidence.)

Mr. Phleger: I now offer in evidence the amended and supplemental application of the Applicant filed with the Commission on November 6, 1940, and ask that it be marked Applicant's Exhibit No. 2.

[8]

The Examiner: Applicant's Exhibit No. 2 will be received and so marked.

(The amended and supplemental agreement above referred to was marked Applicant's Exhibit No. 2 and received in evidence.)

Mr. Phleger: Our first witness will be Mr. P. M. Downing.

Do I understand, Mr. Examiner, that applications for an Examiner's Report and for special findings are to be made at the outset of the hearing?

The Examiner: I do not know that it matters. The custom usually observed is that the request be made at the close of the hearing. The Rules and Practice before the Commission, however, provide that in proceedings under the Public Utility Act the Trial Examiner does not ordinarily make findings. However, if a request is made that request will be communicated to the Commission and in the

event the Commission directs the Trial Examiner to make them, of course, they will be made. In the event request is to be made for findings, such findings can be made by the Trial Examiner.

I will at the same time direct the attention of counsel for all parties appearing here to the provisions of Rule 9 of the Rules and Practice, Subdivision (e), I believe it is, where it provides that counsel for either party, or all parties, may submit to the Trial Examiner a statement setting forth a specific request for findings, which may or may not be accompanied by a brief in support thereof. [9]

I think your request would be just as appropriate at the close of the hearing as at this time. You can do what you like.

Mr. Phleger: I did not want to violate the rules in any respect. If this is the inappropriate time we will repeat it at the close of the taking of testimony.

At this time we want to record a request for a transcript, the request for special findings by the Trial Examiner, and also for a report by the Trial Examiner.

We will repeat that request at the end of the proceeding.

The Examiner: All right.

Before you proceed with the examination of your first witness, Mr. Phleger, I understand, Mr. Rowell, that you do not desire to make a formal petition to intervene, but merely to submit this statement and a copy of the Act and the copies of the uniform accounting system?

Mr. Rowell: That is correct, Mr. Trial Examiner.

I might add this: That about the time that the matter was first set for hearing it is my understanding that the President of the Pacific Gas and Electric Company, Mr. Black, consulted with one of our Commissioners and made the suggestion that perhaps the Commission would like to intervene in this proceeding.

After a conference with myself the Commission indicated that intervention in the ordinary acceptance of that term, meaning taking a position either for or against, would be [10] inappropriate; but the Commission thought it would be desired by the Securities and Exchange Commission, and would be helpful, if it prepared a memorandum revealing the scope of the authority exercised by the California Commission, particularly as applied to the Pacific Gas and Electric Company, the Applicant here.

So, in response to that suggestion, I have prepared such a statement and I trust that it will be deemed to be purely a representation as to the authority which the Commission exercises, and not as a pleading in support of or in objection to the application pending here.

If it is appropriate that we file an application to intervene formally, and if you will so advise me, we will take that action.

The Examiner: I just want to be clear in the matter. I presume you will be available if either party wants to call you as a witness?

Mr. Rowell: Correct.

The Examiner: Does any member of the public, or any representative of anyone, desire to petition to intervene in this proceeding at the present time? (No response.)

If not, you may proceed with your examination, Mr. Phleger. [11]

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant and, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Downing, will you state your name for the record? A. P. M. Downing.

Q. Where do you reside, Mr. Downing?

A. 1980 Washington Street, San Francisco.

Q. What position do you hold with the Pacific Gas and Electric Company, the Applicant?

A. I am Vice-President and General Manager and Director.

Q. When were you appointed to the position of Vice-President and General Manager?

A. August 1, 1929.

Q. You have occupied that position ever since, have you? A. Yes, sir.

Q. When did you first become a Director of the Applicant?

(Testimony of P. M. Downing.)

A. When I became General Manager. [12]

Q. And you have since, and now serve in that capacity, do you? A. Yes, sir.

Q. When did you first come to California?

A. About 1878 or 1879.

Q. Have you since resided in California?

A. Continuously since that time.

Q. Will you briefly state your education?

A. I attended the usual grammar schools, and then attended Stanford University, graduating with the class of 1895.

Q. What studies did you pursue in the University? A. Electrical engineering.

Q. After your graduation in 1925——

The Examiner: 1895.

By Mr. Phleger:

Q. —1895, what positions did you assume and what work did you undertake?

A. My first work was with the Tacoma Light & Power Company in Tacoma. After leaving that company I was with the Market Street Railway Company.

In 1897 I went with the Blue Lakes Water Company. After remaining with them for a time I went with John Martin & Company; then with the Standard Consolidated Mining Company.

In 1901 I became associated with a company which has [13] since become a part of the Pacific Gas and Electric Company.

(Testimony of P. M. Downing.)

Q. With respect to the Blue Lakes Water Company, are the properties of that company now a part of the properties of the Pacific Gas and Electric Company? A. Yes sir.

Q. What course did they pursue in becoming properties of the P.G.&E.?

A. The Blue Lakes Water Company was absorbed by the Standard Electric Company, and the Standard Electric Company was later taken over by the California Gas & Electric Corporation. The California Gas & Electric Corporation was taken over by the Pacific Gas and Electric Company.

Q. So that your first work on the Blue Lakes Water Company was on properties which are now a part of the Pacific Gas and Electric Company system? A. Yes, sir.

Q. Who is John Martin?

A. John Martin was at one time a salesman for a hardware concern here in San Francisco. Then he had the agency for a pipe concern, eastern pipe concern. Then he took over the agency of the Stanley Electric Manufacturing Company and was very active in the promotion of some of the early California hydro-electric plants, which have since become a part of the Pacific Gas and Electric Company.

Q. And you spent approximately two years with John [14] Martin & Company, did you?

A. Not quite that long; about a year, I would say.

(Testimony of P. M. Downing.)

Q. And during that period—that was a period after you were associated with the Blue Lakes Water Company? A. Yes.

Q. What were your duties with John Martin & Company?

A. I was installing and operating electric equipment and doing construction work for John Martin & Company.

Q. On the properties which have since become properties of the Pacific Gas and Electric Company?

A. Yes; I think all of those properties have since become a part of the Pacific Gas and Electric Company.

Q. Will you state what positions you have held with the Pacific Gas and Electric Company during the approximate forty years you have been with it?

A. I started as Manager of the Colusa Gas & Electric Company in 1901.

After leaving the Colusa Gas & Electric Company I went to work as a line construction foreman.

Later I was on the installation of electric equipment in sub-stations and power houses.

Later I became superintendent of sub-stations.

Then I became Engineer of operations.

Then I became Vice-President in charge of electric operations. [15]

Still later I became Vice-President in charge of electric construction and operation.

(Testimony of P. M. Downing.)

Then I was appointed Vice-President and General Manager.

Q. During the period that you have been with the Pacific Gas and Electric Company have you engaged in any outside business ventures?

A. No; none whatever.

Q. The position which you hold with the Pacific Gas and Electric Company is your main business endeavor and you have no outside interests, other than personal ones?

A. That is correct. I devote my entire time to the Pacific Gas and Electric Company work.

Mr. Phleger: Mr. Examiner, I will offer in evidence a drawing, and we will post on the blackboard a larger reproduction of the same drawing. I will ask that the drawing be received in evidence as Applicant's Exhibit No. 3.

This drawing is marked "Pacific Gas and Electric Company, the Origin and Development of Pacific Service", prepared by the Valuation Department of the Pacific Gas and Electric Company.

By Mr. Phleger:

Q. Mr. Downing, I show you the map which I have just described and which I have offered in evidence.

I take it, it may be received?

The Examiner: Any objection? [16]

Miss Calkin: No objection.

(Testimony of P. M. Downing.)

The Examiner: Without objection it will be received in evidence and marked Applicant's Exhibit No. 3.

(The map above referred to was marked Applicant's Exhibit No. 3 and received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, will you describe the map and state what it is intended to show by it?

A. This is a diagramatic representation showing the dates of organization of the various companies which have since become a part of the Pacific Gas and Electric Company.

It will be noted from the map that the lefthand side shows the year 1850, and moving toward the right the various years are shown to 1939.

The dates on which these various companies, which now go to make up the Pacific Gas and Electric Company, are shown by lines starting from the left, during the years that the companies were organized.

By way of illustration, take the one up near the top of the map, shown as Stockton Gas Company. That lines starts in 1859. That represents the year that the Stockton Gas Company was organized.

Following that line to the right it will be seen that in 1887 there is a vertical break in that line. That indicates that a consolidation took place at

(Testimony of P. M. Downing.)

that time between the [17] Stockton Gas Company and the Stockton Gas, Light & Heat Company.

Following it further along to the right you will see other changes there in the corporate structure and other consolidations.

Following it on over to 1910 it will be noted that the Stockton Gas & Electric Corporation, as it was at that time, became a part of the Western States Gas & Electric Company, along with the Humboldt Gas & Electric Company. It continued as Western States Gas & Electric Company until 1927, when there is another vertical break, and it was in 1927 that the Pacific Gas and Electric Company acquired control of the Western States Gas & Electric Company.

You will note that that vertical line breaks down and merges in eventually to the Pacific Gas and Electric Company's solid black line.

The cross hatched at the bottom of that vertical line where it joins the Pacific Gas and Electric Company indicates that the Pacific Gas and Electric Company acquired control through stock ownership; but in 1928, the latter part of 1928, the physical properties of the Western States Gas & Electric Company were taken over by the Pacific Gas and Electric Company and Western States Gas & Electric Company was ultimately dissolved.

The Examiner: That cross hatched or shaded portion in [18] these other instances also indicates stock ownership?

(Testimony of P. M. Downing.)

The Witness: Yes.

The Examiner: When it turns to black that is a merger and a discontinuance of the previous separate corporate entity?

The Witness: Yes.

By Mr. Phleger:

Q. Mr. Downing, does the Pacific Gas and Electric Company conduct its public utility operations in the State of California directly, that is, without the intervention of subsidiary operating companies?

A. Yes.

Q. About how many separate public utilities have gone into the present single operating entity of the Pacific Gas and Electric Company?

A. I couldn't tell you the exact number of the utilities. The Pacific Gas and Electric Company as it stands today, however, represents the consolidation of something over 400 different companies. Some of those companies were public utility companies and some were non-utility companies.

Q. The great bulk of them were public utility companies?

A. A very large percentage of them were utilities.

Q. Will you now briefly outline the history of the Pacific Gas and Electric Company?

A. The Pacific Gas and Electric Company started back [19] in about 1896 or 1897. It goes back further than that. It goes back to the early

(Testimony of P. M. Downing.)

nineties when E. J. DeSabla, who had been in the coffee exporting business here in San Francisco, became interested in mining properties in Nevada County.

In casting about for power to carry on his operations Mr. E. J. DeSabla conceived the idea of developing hydro-electric power on the South Yuba River.

Working in cooperation with Mr. John Martin who, as I have stated, at that time had the Pacific Coast agency for the Stanley Electric Manufacturing Company, they put in a small hydro-electric plant on the South Yuba River near Nevada City, utilizing the power from that plant, first, for mining operations and later for supplying Grass Valley and Nevada City.

Very shortly after this plant was started Mr. John Martin started construction of another plant in Yuba County, utilizing a waterfall available on the irrigation system of the Brown's Valley Irrigation District. That head there had heretofore been wasted, but Mr. Martin utilized that for the production of power and that power was utilized for supplying service in Brown's Valley and Marysville.

The Examiner: What are the names of those two companies?

The Witness: The Yuba Power Company was the plant that Mr. Martin constructed on the water system of the Brown's Valley Irrigation Company.

(Testimony of P. M. Downing.)

The Examiner: That is not shown on the chart? [20]

The Witness: Yes, I think you will find it on that chart. I don't think we overlooked it.

The Examiner: I was searching for it. You said it was sometime during the 90s and I couldn't find it. Maybe I overlooked it.

Just a minute—I have found it here (indicating). It shows, beginning in 1897.

The Witness: That was when the Yuba Power Company was started.

The Examiner: That is right.

The Witness: Very shortly after the completion of that plant of the Yuba Power Company it became overloaded and another company, known as the Yuba Electric Power Company, was organized during the latter part of 1898, or the early part of 1899. That company absorbed the Yuba Power Company and constructed another plant, known as Colgate, on the North Yuba River.

Colgate relieved the overload on the Yuba plant and early in 1900 transmission lines were extended from Colgate into Sacramento and a part of the load on the Sacramento Electric, Gas & Railway Company was thereafter carried on the Colgate system.

By Mr. Phleger:

Q. Mr. Downing, if I may interrupt, the earliest company of John Martin that was founded in 1892, do you recall [21] what its name was?

(Testimony of P. M. Downing.)

A. Nevada County Electric Company. That was the one in which E. J. DeSabla was primarily interested in, although Mr. Martin was associated with him.

Mr. Phleger: Mr. Examiner, I think this is the one you were looking for in 1892; that was the one that was referred to.

The Examiner: According to this exhibit here, Applicant's Exhibit 3, that does appear just below the Yuba Power Company and shows that it merged, or consolidated with the Yuba Electric Power Company in 1900.

Mr. Phleger: Yes, but it was the 1892 one that was first referred to.

The Witness: That was the first of the plants to be constructed.

By Mr. Phleger:

Q. If you will go ahead, please, Mr. Downing.

A. The next step was the formation of the Bay Counties Power Company in 1900. That company constructed transmission lines from Colgate into Oakland and supplied power to the Oakland Traction Company.

The Examiner: That Bay Counties Power Company was a merger or consolidation of these other two, was it not?

The Witness: Yes.

The Examiner: And, subsequent to that merger, extended [22] its line, as you say, to the Bay District?

(Testimony of P. M. Downing.)

The Witness: Yes; into Oakland and the Bay area.

The Examiner: All right.

A. (continuing) Very shortly after those lines were completed into Oakland Messrs. Martin and DeSabla acquired control of the Oakland Gas, Light & Heat Company, which supplied power in Oakland and vicinity.

In the meantime they also acquired a number of small independent companies suplying limited areas in the north central part of California. Among those acquired properties were the San Rafael Gas & Electric Company, the Santa Rosa Lighting Company, the Merchants Lighting Company of Santa Rosa, the Marysville Gas & Electric Company, the Nevada City Gas Company, the Grass Valley Gas Company, the Napa Gas & Electric Company, the Colusa Gas & Electric Company, the Woodland Gas & Electric Company, the Chico Gas & Electric Company, the Petaluma Gas & Electric Company. Practically all of these companies were dependent for their power supply on steam plants, many of which were rather obsolete, inefficient and inadequate.

In March of 1901 the California Gas & Electric Company was organized and took over all of the plants which I have just named, these small independent plants. Eventually the California Central Gas & Electric Company became a part of the California Gas & Electric Company, a corporation, and the [23] California Gas & Electric Corporation ulti-

(Testimony of P. M. Downing.)

mately became a part of the Pacific Gas and Electric Company.

With the load growth and the extension of services, electric service in areas not theretofore served, the various plants then in operation soon became overloaded and the Valley Counties Power Company was formed and the DeSabla Power House on Butte Creek was constructed.

The Valley Counties Power Company was financed and controlled by John Martin and E. J. DeSabla and their associates. They also acquired the Centerville Power House from the Butte County Electric Light & Power Company, this latter plant being located on Butte Creek a short distance below the DeSabla Power House. Power from those two plants was delivered into the system of the Bay Counties Power Company.

In 1897 the Standard Electric Company of California was organized. It took over the water and the electric properties of the Blue Lakes Water Company and proceeded with the development of the electro-hydro plant on the Mokelumne River in Amador County.

Power from this plant was first supplied to the mines and the various towns along the Mother Lode in Amador and Calaveras Counties, but later a line was constructed into Stockton, and power was distributed to the Stockton Gas & Electric Company; and still later lines were extended to San Francisco and Oakland, and power supplied to the San Fran-

(Testimony of P. M. Downing.)

[24] cisco Gas & Electric Company and the Oakland Gas, Light & Heat Company.

By Mr. Phleger:

Q. Mr. Downing, who were the principal active figures in the affairs of the Standard Electric Company?

A. Mr. W. H. Crocker was the moving spirit in the Standard Electric Company.

Q. Is he the W. H. Crocker who later became a Director of the Pacific Gas and Electric Company?

A. Yes.

Q. And served for many years?

A. Up until the time of his death; yes.

Q. And he is the father of W. W. Crocker, who is now a Director of the Pacific Gas and Electric Company, is he?

A. Yes. Mr. W. W. Crocker succeeded his father as a Director of the Pacific Gas and Electric Company.

Q. Proceed.

A. The organization of the California Gas & Electric Corporation of 1901 marked the beginning of a series of consolidations of many small companies, the control of which had theretofore been acquired.

Some of the major companies taken over by the California Gas & Electric Corporation during 1903, 1904 and 1905 are the following: Bay Counties Power Company, Oakland Gas, Light & Heat Com-

(Testimony of P. M. Downing.)

pany, Sacramento Electric, Gas & Railway Company, [25] Standard Electric Company of California, United Gas & Electric Company, South Yuba Water Company, California Central Gas & Electric Company and the Fresno Gas & Electric Light Company.

Q. Mr. Downing, do you recall the names of the principal figures in the Sacramento Electric, Gas & Railway Company?

A. Mr. Gallatin and Mr. Livermore.

Q. Was that Mr. Livermore the father of Norman Livermore? A. Yes.

Q. And who is now a Director of the Pacific Gas and Electric Company?

A. That is correct; yes.

Q. In the latter days of the Sacramento Electric, Gas & Railway Company Mr. Norman Livermore, who is now a Director of the Pacific Gas and Electric Company, was active in its affairs, was he not?

A. Yes, he was.

The Pacific Gas and Electric Company was organized during the latter part of 1905 and acquired control of the California Gas & Electric Corporation and the San Francisco Gas & Electric Company. That is shown very clearly on the map, or drawing.

The Examiner: Indicated by the cross hatching as controlled through stock ownership? [26]

The Witness: Yes, until later on, and the properties were taken over and the companies dissolved

(Testimony of P. M. Downing.)

During the period from 1910 to 1930 the Pacific Gas and Electric Company acquired the properties of a large number of other companies including, in 1911, the Mutual Electric Light Company, supplying electric service in a limited area in San Francisco; the Metropolitan Gas Corporation, supplying gas in a limited area in San Francisco; and, in 1917, the Oro Electric Corporation, supplying electric service in Butte County, Oroville and vicinity, San Joaquin County, and a small area in the vicinity of Stockton. That same company supplied gas service in Oroville and water service in Oroville and vicinity.

In 1919 the Pacific Gas and Electric Company took over the Northern California Power Company, supplying electric service in Shasta, Tehama, Glenn, Colusa and Butte Counties; and it also supplied gas service in Redding, Red Bluff and Willows, and water service in Redding and Willows.

In 1923 the California Telephone & Light Company was taken over by the Pacific Gas and Electric Company. That company supplied electric service in Mendocino, Lake, Sonoma, and Napa Counties; and telephone service in a number of towns in those counties, among which are Sonoma, Healdsburg, Lakeport, Guerneville, Middletown, Potter Valley, and certain rural areas in the vicinity of Cloverdale, Lakeport, Santa [27] Rosa and Sebastapool.

The Examiner: This company, according to this chart, Exhibit No. 3, was only acquired through stock ownership in the year 1923?

(Testimony of P. M. Downing.)

The Witness: That is correct. Later the properties were taken over by the Pacific Gas and Electric Company and the company was dissolved.

The Examiner: These other acquisitions that you have previously described were all taken over on the dates indicated, rather than through stock ownership, according to this chart?

The Witness: The chart, so far as we know, is correct. Some of those companies were taken over, the physical properties were taken over; others were acquired through stock ownership.

The Examiner: The California Telephone & Light is the first of those that you have named since 1910 which was acquired otherwise than by taking over the properties, if this chart is correct?

The Witness: Yes. To the best of our knowledge and belief the chart is correct.

The Examiner: Go ahead.

A. (continuing) In 1927 the Pacific Gas and Electric Company took over the Coast Valleys Gas & Electric Company, supplying electric service in Salinas, Monterey, Pacific Grove, [28] and elsewhere in Monterey County, and in portions of Santa Clara, San Benito Counties. It also supplied gas service in Salinas and Monterey, and water service in Salinas and King City.

It also took over during that same year, 1927, the Western States Gas & Electric Company, supplying electric service in San Joaquin, Sacramento, El

(Testimony of P. M. Downing.)

Dorado, Contra Costa, Calaveras, Humboldt and Trinity Counties and gas service in Stockton. It also took over Sierra and San Francisco Power Company supplying electric service in Calaveras, Contra Costa, Monterey, San Francisco, San Joaquin, Stanislaus and Tuolumne Counties. It also supplied water service in Sonora and Jamestown and a number of other smaller communities in the vicinity of those two towns.

In a majority of these consolidations the absorbed companies were acquired by the exchange of stock of Pacific Gas and Electric Company for the stock of the absorbed companies. In some cases, however, their control was acquired by the purchase of the stock of the companies taken over. [29]

By Mr. Phleger:

Q. Mr. Downing, in the cases where Pacific Gas and Electric Company has first acquired the stock and has later taken over the physical properties, has Pacific Gas and Electric Company operated those subsidiary companies in the meantime?

A. Yes.

Q. And did they in each case with the acquisition of the stock control become integral parts of the Pacific Gas and Electric system?

A. Yes sir; in so far as the physical operations are concerned, why, those absorbed properties were operated in exactly the same way and in conjunction with the properties of Pacific Gas and Electric Company.

(Testimony of P. M. Downing.)

Q. And is it fair to say that when properties have been acquired they have been acquired in either of two ways: One, directly through the acquisition of the physical properties or, two, through the acquisition first of the stock, the operation of the company whose stock was acquired, and later the absorption of the physical properties into the Pacific Gas and Electric Company?

A. That I think is a correct statement, yes.

Q. And in that process over these periods of years approximately 400 companies have been so acquired, their assets taken over, so that there is now but a single company? [30]

A. That is correct.

Q. Now, with respect to Applicant's Exhibit 3 that you have been referring to in your testimony, was that chart prepared in the offices of the Pacific Gas and Electric Company? A. Yes sir.

Q. From data in the records of the Pacific Gas and Electric Company? A. Yes sir.

Q. And are the facts and data shown upon it true and correct?

A. To the best of our knowledge and belief they are correct.

Q. It has been used by the company, has it not, in its own business as being accurate and correct?

A. Yes sir.

Q. Now, you have described the properties of the Pacific Gas and Electric Company and their

(Testimony of P. M. Downing.)

growth. Will you describe briefly the men who are instrumental in the building up of this property?

A. The men who started what is today Pacific Gas and Electric Company were John Martin and E. J. DeSabla. I have already stated that Mr. Martin had been engaged in various lines of business here in San Francisco until he took over the agency of Stanley Electric Manufacturing Company [31] and became interested in the development of hydro power.

Mr. DeSabla—Mr. DeSabla's father was a coffee importer here in San Francisco. After his death Mr. DeSabla took over his father's business and later became interested in mining in Nevada County and he and John Martin were the two men who conceived the idea of developing these water power resources and also of consolidating these different companies which I have mentioned into one large operating organization. They were the moving spirits in the organization up until the formation of Pacific Gas and Electric Company during the latter part of 1905. That was the date on which Pacific Gas and Electric Company was organized.

Mr. Frank Drum then became president of the company. Mr. Drum was a California man, lived the greater part of his life in the Bay area, in Oakland and San Francisco. He was not only a large stockholder himself, but he also represented interests which were heavily interested in Pacific Gas and Electric Securities.

(Testimony of P. M. Downing.)

Q. Were these interests that Mr. Drum represented California interests?

A. Yes; yes, they were all California interests.

Q. Do you recall Mr. John A. Britton?

A. John A. Britton spent the greater part of his life with the Oakland Gas Light & Heat Company. When the California Gas & Electric Corporation was formed he became [32] president of California Gas & Electric Corporation and when Pacific Gas and Electric Company was formed he became vice-president and general manager of Pacific Gas and Electric Company.

Q. Do you recall how long he continued with Pacific Gas and Electric Company?

A. He continued as vice-president and general manager up until the time of his death which, as I recall, was in 1923.

Q. Were Martin and DeSabla active in the affairs of the Pacific Gas and Electric Company after it was organized?

A. For a time, yes, but Mr. Drum was president. They, however, were active for several years after Pacific Gas was organized. Due to failing health Mr. Drum retired from the presidency of Pacific Gas in 1920 and was succeeded by Mr. W. E. Creed. Mr. Creed was also a Californian. When he was elected president of Pacific Gas and Electric Company he was president of the East Bay Water Company and represented a number of utilities as their attorney in different matters.

(Testimony of P. M. Downing.)

Mr. Creed continued as president until 1927 when he died and was succeeded by Mr. A. F. Hockenbeamer. Mr. Hockenbeamer had spent the early years of his life with different steam railroads in the East, but in 1907 when N. W. Halsey [33] and Company were considering the handling of some financing for Pacific Gas and Electric Company he was sent out to California by N. W. Halsey and Company to investigate and report to his principals, N. W. Halsey and Company, on the financial standing and so on of Pacific Gas and Electric Company. After he completed that assignment he was invited by Mr. Drum, then president of the company, to become associated with Pacific Gas and Electric Company, and he was made vice-president and comptroller of the company. He continued in that capacity until Mr. Creed's death in 1927 when he became president of the company and remained president until his death in 1935.

Q. When Mr. Hockenbeamer became associated with the Pacific Gas and Electric Company did he disassociate himself from his eastern connections?

A. Entirely so, yes.

Q. And during the period commencing in 1907 when he joined the P. G. and E. his sole activity was with the P. G. and E., was it not?

A. He devoted his entire time and attention to Pacific Gas and Electric Company affairs.

Q. He had no outside business interests, did he?

(Testimony of P. M. Downing.)

A. None whatever.

Q. No connection with any other corporation?

A. No. [34]

The Examiner: A short recess at this time, Mr. Phleger?

Mr. Phleger: Yes sir.

(At this time a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Before we resume the examination I should like to ask if there is any member of the public who desires to make any statement. I neglected to do that at the opening of the hearing this morning, but one of the reasons for conducting this hearing here in San Francisco is that if there is any member of the public who desires to make any statement for this record for the consideration of this Commission I would be glad to have them do it.

I may renew this announcement at various sessions in the event I see anyone present who is not a participant in this proceeding.

This gentleman back here, do you want to make any statement for this record, or are you just an interested listener?

Mr. Adolph Kessler: I am a Pacific Gas and Electric stockholder; maybe later on; I don't know; I just came in.

The Examiner: All right, that is fine.

(Testimony of P. M. Downing.)

Mr. Phleger?

Mr. Phleger: I will offer in evidence as Pacific Gas and Electric Company's Exhibit 4 a map marked Electric Power Stations and Transmissions Systems in California compiled by [35] Pacific Gas and Electric Company, 1928.

The Examiner: Any objection to this, Miss Calkin? You have seen this map?

Miss Calkin: No, no objection.

The Examiner: It will be received in evidence and marked Applicant's Exhibit 4.

(The map referred to above was marked Applicant's Exhibit No. 4 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, will you describe the map which has just been offered in evidence?

By the way, has it been admitted?

The Examiner: Yes, as Applicant's No. 4 without objection.

A. This map is intended to show the various stations and transmission systems in California in 1928. Starting at the top of the map you will notice some lines crossing the California-Oregon state line and extending south into California some distance where they join the red lines. Those are lines of the California-Oregon Power Company, an interstate company operating in California and Oregon. The red lines indicate the major transmission

(Testimony of P. M. Downing.)

lines of Pacific Gas and Electric Company as they existed as of the date of this map, 1928.

The purple lines extending from the northeastern part [36] of the state there near the figures 44 on down through Sacramento and into Oakland represent the main transmission lines of the Great Western Power Company.

The green lines a little further south represent the lines of the San Joaquin Light & Power Corporation.

The purple lines starting about the middle of the map just west of Bishop and extending down into Los Angeles are the major transmission lines of the Southern California Edison Company.

The yellow lines on the right hand side of the map starting near Mono Lake and coming down represent the lines of the Nevada-California Power Company.

In the vicinity of Lake Tahoe you will see some purple lines. Those are the lines of—they are shown here as the Truckee River Power Company. It is now known as the Sierra Pacific Power Company. That is an interstate company operating in both California and Nevada.

The Examiner: These yellow lines that you just spoke about are shown in the legend in the upper right as Southern Sierras Power Company. You gave some other name. What was that?

The Witness: It was at that time known as

(Testimony of P. M. Downing.)

Southern Sierras Power Company. It is now known as Nevada-California Power Company.

By Mr. Phleger: [37]

Q. Mr. Downing, was the original of this map prepared by the Pacific Gas and Electric Company?

A. Yes.

Q. And are all of the facts and figures given upon it true and correct? A. Yes sir.

Q. The legends which appear on it in various colors and so forth, they also are correct; are they not? A. Yes sir.

Q. Now, will you describe the competitive condition which existed at the time this map was made between the Great Western Power Company, the San Joaquin Light & Power Company and the Pacific Gas and Electric Company.

A. Just prior to the taking over of the Great Western Power Company and San Joaquin Light & Power Corporation a highly competitive situation existed in certain parts of the territory in the northern part of the state.

Approximately 90 percent of the business of the Great Western Power Company was in territory where that company was in competition with Pacific Gas and Electric Company.

The Great Western Power Company completed the construction of its Las Plumas plant on the Feather River during the latter part of 1908. At that time Pacific Gas and Electric Company needed

(Testimony of P. M. Downing.)

power and it purchased a substantial amount of [38] power from the Great Western Power Company. In fact, for a time Pacific Gas and Electric was the Great Western's largest customer. Pacific, however, could not absorb the entire output of the Great Western's plant so the Western started competition with Pacific Gas and Electric.

At that time there was no state law requiring utilities to first obtain certificates of convenience and necessity before undertaking to give service in a given community. On the contrary, any person, firm or corporation had a constitutional right to the free and unrestricted use of streets of any incorporated city or town for the erection of poles, wires, and other facilities necessary to give electric service.

By taking advantage of these broad constitutional rights and by acquiring a number of small distribution systems in various places there soon developed a highly competitive situation between the two companies. They were paralleling lines, duplicating facilities, each resorting to every means at its disposal to not only obtain new business, but also to take from the other company the business it was already serving.

Some of the more important areas in which competition existed were San Francisco, Oakland, Emeryville, Sacramento, Napa, Santa Rosa, Petaluma, Martinez and Pittsburg.

Q. Have you any approximate figure of the amount of the Great Western Company's business

(Testimony of P. M. Downing.)

which was derived from [39] territory which was also occupied by the Pacific Gas and Electric Company?

A. Approximately 90 per cent of the gross revenue of Great Western Power Company came from territory in which that Company was in competition with Pacific Gas and Electric Company.

Q. Now, these conditions which you have just described existed, did they not, up until the time of the acquisition by the Pacific Gas and Electric Company of the stocks of the Great Western Power Company and the San Joaquin Light & Power Company in 1930? A. Yes sir.

Q. Will you state the reasons actuating the Pacific Gas and Electric Company in its desire to acquire the Great Western?

A. Well, under the competitive conditions which existed at that time inefficiency was inevitable. Two systems were being maintained to give service which one could very readily supply. Obviously such a situation was an unhealthy one and was so recognized by the two companies and also by the general public.

In the application to the Railroad Commission for authority to make the consolidation it was pointed out that the consolidation would make possible:

1. The control, administration and operation of the [40] properties and business by a single managerial organization and operating personnel with

(Testimony of P. M. Downing.)

resulting economies through elimination of unnecessary duplication.

2. Interconnection with Pacific Gas and Electric Company's system with unified control which will make better and more efficient use of plants and transmission systems resulting in reduced costs and greater assurance of uninterrupted service to all customers.

3. The more comprehensive and effective development of resources and thereby make substantial savings in capital expenditures.

4. The obtaining of money for capital expenditures at also lower costs.

Q. Why the latter?

A. Because the competitive element had been eliminated and by the consolidation the securities of the one company had a better standing in the financial world than the two companies would have if operated independently.

Q. And is it not a fact that the credit standing of the Pacific Gas and Electric Company at that time was actually better than that of the Great Western Company?

A. Yes, I think that it was. In this same application to the Railroad Commission it was estimated that the savings in the operation of the properties would be between one million and a million and a half dollars per year; those were [41] the operating savings. It was also estimated that further savings

(Testimony of P. M. Downing.)

could be effected by retiring outstanding securities of acquired companies and by doing away with duplicate construction expenditures in the future. Subsequent results have shown that the saving in operating expenses was approximately $1,275,000 per year, and in fixed charges and preferred dividends approximately $950,000 per year.

It was also found that by combining the operations of the different systems and by taking advantage of low diversification, 35,000 kilowatts of generating capacity idle under separate operation, could be put to beneficial use under combined operations.

Q. Mr. Downing, an application was filed by the Pacific Gas and Electric Company in due course, was it not, to purchase from North American Company and its subsidiaries the stocks of Great Western Power Company and San Joaquin Light & Power Company? A. Yes sir.

Q. And a hearing was held on that application?

A. Before the Railroad Commission, yes.

Q. Did you appear and testify at that hearing?

A. Yes, I think that I did.

Q. And in substance as you have testified now with respect to the economies and benefits to the public from the consolidation? [42]

A. Yes sir.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 5 certified copy of Decision No. 22432 of the Railroad Commission of the State of California, dated San Francisco, California, May 14,

(Testimony of P. M. Downing.)

1930, authorizing the granting of permission and authority to the Pacific Gas and Electric Company to purchase shares of the preferred capital stocks and common capital stocks of the Great Western Power Company of California, San Joaquin Light & Power Corporation, and Midland Counties Public Service Corporation under the terms and conditions of an agreement between Pacific Gas and Electric Company and the North American Company filed with the Commission, which agreement is dated March 29, 1930.

The Examiner: Have you seen this, Miss Calkin?

Miss Calkin: Yes; no objection.

The Examiner: It is an instrument consisting of 17 pages. Received in evidence and marked Applicant's Exhibit 5.

(The 17 page document referred to above was marked Applicant's Exhibit No. 5 and was received in evidence.)

Mr. Phleger: I will also offer in evidence at this time as Applicant's Exhibit 6 a copy of the Agreement dated March 29, 1930 between the North American Company and Pacific Gas and Electric Company, which is the Agreement [43] mentioned in the order of the Railroad Commission just introduced in evidence. Attached to the Agreement are accompanying letters between the Pacific Gas and Electric Company and the North American Company and Great Western Power Company relating to provisions in the Agreement.

(Testimony of P. M. Downing.)

Miss Calkin: I have no objection to Applicant's Exhibit No. 6.

The Examiner: Received in evidence and marked No. 6.

(The Copy of Agreement referred to above was marked Applicant's Exhibit No. 6 and was received in evidence.)

By Mr. Phleger:

Q. Now, Mr. Downing, will you refer to the map which has been introduced in evidence and marked Applicant's Exhibit 4, I believe. In your testimony, and according to the legend, the properties of San Joaquin Light & Power Company are shown in green. Do those properties as shown on this map include the properties of the Midland Counties Public Service Corporation? A. Yes sir.

Q. Will you explain what the properties of the Midland Counties Public Service Corporation were and where they were located?

A. They were along the coast starting with about San Luis Obispo and running as far south as, well, in the vicinity [44] of Lompoc.

Q. Were the properties of the Midland Company operated in close association with those of the San Joaquin Company? A. Yes sir.

Q. They were owned by substantially the same interests? A. The same interests, yes.

Q. And was it for that reason that the Midland properties were shown in the same color and as part

(Testimony of P. M. Downing.)

of the properties of the San Joaquin Company on this map?

A. Yes sir.

Q. Will you now proceed, Mr. Downing, to explain, or rather, describe various attempts by the Pacific Gas and Electric Company to acquire control of or ownership of the properties of the Great Western Company?

A. Well, the consolidation of Pacific Gas and Great Western had been discussed at various times ever since the Great Western Company was organized back in about 1906. As evidence of this we have in our files a copy of a memorandum dated New York, October 20, 1910, relative to a proposed lease by Pacific of the Great Western Company and its associated company, California Electric Generating Company.

By way of explanation I might say that the California Electric Generating Company owned a steam electric generating plant in the City of Oakland and it was operated in conjunction with the Great Western Company. [45]

This memorandum is initialed "A. C. B." meaning A. C. Bedford, then a director of the Great Western Power Company and California Electric Generating Company, and "F. G. D.", Frank G. Drum, president of Pacific Gas and Electric Company.

The files also contained a copy of a document entitled "Pacific Gas and Electric Company, Great

(Testimony of P. M. Downing.)

Western Power Company and subsidiary corporations, outlined plan of proposed reorganization, October 11, 1911".

The files also contain numerous reports and correspondence bearing on the subject of consolidation. Nothing came out of the above referred to negotiations until after Mr. Creed's election to the presidency of Pacific Gas in 1920 when negotiations for the acquisition of the Great Western Company were again undertaken.

Late in 1922 an agreement was reached under which the Pacific Company was to offer its preferred and common stock in exchange for the preferred and common stock of Western Power Corporation. This latter company, Western Power Corporation, was a New York holding company owning, as substantially its only assets, all of the $27,500,000 par value of the common stock of the operating company, Great Western Power Company of California.

For some reason, however, this agreement was never consummated.

In 1925 Western Power Corporation acquired control of [46] the San Joaquin Light & Power Corporation and Midland Counties Public Service Corporation. During that same year control of Western Power Corporation was acquired by the North American Company.

Following the death of Mr. Creed in 1927 and the election of Mr. Hockenbeamer to the presidency of

(Testimony of P. M. Downing.)

the company further studies were made from time to time looking to the possible acquisition from the North American of control of Western Power Company's California subsidiaries.

Negotiations with this end in view were actively undertaken in 1929 and consummated during the early part of 1930 when Mr. Hockenbeamer went to New York and finally reached an agreement with the representatives of the North American Company under which Pacific acquired control of Great Western Power Company, San Joaquin Light & Power Corporation and Midland Counties Public Service Corporation.

Q. That is the transaction which was the subject matter of the order of the Commission which has just been introduced in evidence, is it not?

A. Yes.

Q. And is covered by the agreement also introduced in evidence? A. Yes sir.

Q. Immediately following acquisition of the control, or of the majority stock of those three companies by Pacific [47] Gas and Electric Company, was there any incorporation of those companies in the operations of the Pacific Gas and Electric Company?

A. Yes; the operations of those properties were almost immediately consolidated with the operations of Pacific Gas and Electric Company. The duplicate organizations which had, during the com-

(Testimony of P. M. Downing.)

petitive period, been built up in these various places were eliminated and the operations of the two companies were unified under a single management and control.

Q. And what was that management and control?

A. Pacific Gas and Electric Company management control.

Q. Who, and I mean what individual, worked at the details of incorporating into the Pacific Gas and Electric system the business and personnel of the acquired companies?

A. In so far as the physical or operating end of the properties is concerned I think, perhaps, I had as much to do with it as anyone.

Q. Isn't it a fact that you personally laid out the organization and made all of those decisions?

A. Yes.

Q. In making those decisions were you given any instructions or suggestions by the North American Company or [48] by anyone associated with the acquired companies? A. None whatever.

Q. Were your decisions in connection with that matter your own decisions solely from the standpoint of the Pacific Gas and Electric Company?

A. Yes.

Q. Were there any commitments that you know of in connection with the acquisition of these properties having to do with personnel of any of the acquired companies? A. None whatever.

(Testimony of P. M. Downing.)

Q. You were perfectly free to lay out the manner of acquisition and incorporation of these properties according to what you thought were the best interests of the Pacific Gas and Electric Company, were you? A. Yes.

Q. Now, you have stated at some length the physical situation with respect to the Great Western. Will you now describe briefly the physical situation in connection with the San Joaquin Light & Power Company?

A. The San Joaquin Light & Power Corporation was not in competition with Pacific Gas & Electric Company. Their operations were further south and covered the southern part of the San Joaquin Valley. A part of their power supply, however, was obtained from the north. Prior to the consolidation it came from the Great Western Power system. After the [49] consolidation and the tying in of Pacific and Great Western that power supply to San Joaquin was continued, part of the power coming from what was formerly the Great Western system and a part of it from what was formerly Pacific Gas system.

Q. Were the systems of the Pacific Gas and Electric and the San Joaquin complementary, that is to say, were they physically—did they physically lie in adjoining territories?

A. They were contiguous, yes.

Q. Contiguous territories, but did not duplicate their service or facilities? A. No.

(Testimony of P. M. Downing.)

Q. When was it that the Pacific Gas and Electric Company introduced natural gas into San Francisco? A. That was in 1929 and '30.

Q. And where does that gas come from?

A. The greater part of it comes from the San Joaquin Valley fields. The Kettleman field is the largest field from which we obtain gas, although there are a number of other fields in the San Joaquin Valley from which we obtain supplies. Those fields were 200 to 210 miles south of San Francisco. We also get some gas from fields farther north. The largest here in the north is at Rio Vista. We get some from McDonald Island, some from Tracy, and a small amount from the Marysville Buttes.

Q. Now, those places of gas supply were mainly in [50] territory occupied by the San Joaquin Power & Light Company, were they not?

A. Yes.

Q. And did the Pacific Gas and Electric Company, prior to acquiring the San Joaquin Light & Power Company, serve with gas any part of the territory which the San Joaquin Light & Power Company was then serving with electric energy?

A. Yes, in the City of Fresno. Pacific Gas and Electric owned the gas distribution system there prior to the consolidation.

Q. So that with respect to gas you were already in the territory occupied by San Joaquin Light & Power Company and your source of natural gas for

(Testimony of P. M. Downing.)

the major part of all of your properties also came from that territory?

A. That is correct.

Q. And I understand also from your testimony at the time of the acquisition of these various properties by the Pacific Gas and Electric Company the controlling interest in San Joaquin and Midland were all held by the North American Company?

A. That is my understanding, yes.

Mr. Phleger: Do you want to adjourn now?

The Examiner: If you have come to a convenient point.

Mr. Phleger: Yes. [51]

The Examiner: We will recess until two o'clock.

(Whereupon at 12:00 Noon a recess was taken to 2:00 p. m. of the same day.) [52]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing.

Whereupon—

P. M. DOWNING

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

Mr. Phleger: Will you read the last question and answer, Mr. Reporter?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of P. M. Downing.)

Mr. Phleger: I now offer in evidence a map entitled "High Voltage Electric Transmission System and Natural Gas Pipe Lines of Pacific Gas and Electric Company in Northern and Central California as of December 31, 1939."

The Examiner: Without objection this will be received in evidence and marked Applicant's Exhibit No. 7.

(The map above referred to was marked Applicant's Exhibit No. 7 and received in evidence.)

Mr. Phleger: I might state that this exhibit was produced in response to a request by the Securities and Exchange Commission and from time to time later such exhibits as we have prepared and produced in response to their request will be so designated. [53]

This has been marked as Exhibit No. 7?

The Examiner: That is correct.

By Mr. Phleger:

Q. Mr. Downing, referring to Exhibit No. 7, was this map prepared by the company under your direction? A. Yes.

Q. And is all of the data shown on it true and correct? A. Yes.

Q. Will you now describe generally the Pacific Gas and Electric system as it exists at this time?

A. The Pacific Gas and Electric system as it stands today gives electric service in 46 of the 58 counties in California.

(Testimony of P. M. Downing.)

This map, you will note from the legend in the upper right hand corner, shows the electric generating stations, gas generating stations, the high voltage transmission lines, the high pressure gas lines, the steam plants, the water systems, and the street railway system operated by the company.

The red lines represent the high voltage electric transmission lines.

The rectangular red markings represent the hydro-electric power houses.

The green lines represent the high pressure natural gas lines which, you will note, run from the southern part of the San Joaquin Valley in a general northerly direction to supply [54] the metropolitan centers in the San Francisco Bay area.

All of these lines are inter-connected. All the power houses, whether hydro, steam, or power obtained from outside agencies, feed right into this common network of lines. In other words, the whole system is operated as a unit, both insofar as the electric operations are concerned and also insofar as the gas operations are concerned.

Q. Will you now, Mr. Downing, give generally the statistics with respect to the territory served, the extent of distribution lines, and so forth?

A. The company as it stands today furnishes electric service in 46 of the 58 counties in California, an area embracing between 85,000 and 90,000 square miles. That is all contiguous terri-

(Testimony of P. M. Downing.)

tory. In other words, it is not split up into isolated units.

The company owns and operates 47 hydro-electric generating stations, having an aggregate installed capacity of 1,143,688 horsepower.

We lease and operate two hydro-electric stations having a combined installed capacity of 33,512 horsepower.

We have nine steam plants having an aggregate installed capacity of 575,905 horsepower.

In addition to the above sources of power supply we purchase power from nine outside supplying agencies. From eight of these delivery is on an outright purchase and sale basis. [55] The ninth, the Hetch Hetchy power of the City and County of San Francisco, is on a consignment basis.

The company owns and operates 6,138 miles of transmission lines operating at about from 60,000 to 220,000 volts.

From 485 sub-stations, operating at voltages from 220,000 to 11,000, 33,306 miles of distribution lines furnish service to 909,155 electric customers.

Those figures are as of June 30, 1940.

Electric service is furnished to 137 incorporated cities and towns and to 235 unincorporated communities, having an estimated population of 250 or over.

Customers in most of these cities and communities are served directly by the company, although resale power is sold at wholesale to a number of outside distributing agencies.

(Testimony of P. M. Downing.)

Q. What can you say, Mr. Downing, with respect to the rural territory served by the company?

A. You will note from Exhibit 7 that practically all of our hydro-electric plants are located in the foothills, or in the Sierra Nevada Mountains on the eastern side of the State. The general direction of power transmission is south or southwest. Those lines running in those directions, in that direction, from the foothills to the Bay area, which is our heavy load center, cross the interior valleys, Sacramento and San Joaquin, and the existence of those lines in those valleys has made power available for rural uses. [56]

The company has long recognized the importance of agriculture in the economic scheme of California and the vital part electricity plays in the success of that industry, and we have offered attractive inducements to build up our rural electric load.

That our efforts have been fairly successful is evidenced by the fact that of the 73,000 farmers, either on or within reasonable distance of our lines, more than 70,000, or approximately 96 percent of the total number, now have electric service.

Over 35,000 of the 70,000 rural electric customers use power for irrigation pumping. The total connected irrigation pumping load is in excess of one-half million horsepower.

There now remains only a comparatively few rural communities in which electric service is not available.

(Testimony of P. M. Downing.)

Under the company's liberal line extension policy, and with the advent of new appliances and the resulting increase in customer usage, lines are continually being built to the few remaining unserved areas and service is being established.

The Examiner: That refers, I presume, to those counties in which you have your lines?

The Witness: Yes. We cover practically the entire north central part of the State wherever there is any business to be had.

With the advent of new appliances and the resulting in- [57] crease in usage of power we are continually extending lines into sparsely settled areas which have heretofore not been served.

By Mr. Phleger:

Q. And it is a fact that many sparsely settled areas are served by the company that it would be uneconomic for any agency to serve because of the fact, as you have explained, that your transmission lines cross long distances from the mountains southward and westward toward the heavily populated areas? A. That is correct; yes.

Q. Mr. Gerdes suggests that you got some sort of a prize recently in connection with the rural service.

A. Yes. There is a prize offered each year by the Edison Electric Institute to the company that has done the most in the way of extending service into the rural areas. The prize for having accomplished more along those lines than any other com-

(Testimony of P. M. Downing.)

pany in the country was awarded to the Pacific Gas and Electric Company at the last meeting of the Edison Institute in June.

Q. June of 1940?

A. June of 1940; yes, sir.

Q. Will you describe, by reference to Exhibit 7, the territory served and the distribution system of your gas service?

A. As I stated a moment ago, the green lines on Exhibit [58] 7 represent the high pressure gas transmission lines extending from the southern part of the San Joaquin Valley in a general northwesterly direction to the San Francisco Bay area.

The Pacific Gas and Electric Company is not in the business of producing gas. All of the gas which we distribute is purchased from oil companies.

There has been more development in the way of oil and gas in the San Joaquin Valley than there has been further north.

The westerly gas line, as shown on the map, is owned 100 percent by the Pacific Gas and Electric Company.

The easterly line, as shown on the map, is owned by Stan-Pac-Co.

The Reporter: The name, again, please?

Mr. Bosley: The Standard-Pacific Gas Lines, Inc., isn't it?

The Witness: Yes—as appears in the legend on this exhibit.

That is owned 50 percent by Pacific Gas and Elec-

tric Company and 50 percent by the subsidiaries of the Standard Oil Company, and we have a 50 percent interest in the capacity of that line.

Our heavy gas load is obviously in the Bay area. We transport that gas from the oil fields to the Bay area, starting at 500 pounds per square inch. The pressure drops as it [59] gets farther away from the wells; but service can be and is given from those lines wherever there is a demand for it.

There is another independent system that is supplied from an independent source up in the extreme north, supplying Marysville, Chico and Oroville. That gas comes from some wells in the Buttes. There is no connection at present between those wells and the wells in the San Joaquin Valley. That is operated as an independent system, although there is a connection there of about 11 or 12 miles which could be made to tie them together.

A good part of the gas from the San Joaquin Valley is wet gas, that is, it carries in suspension a certain amount of gasoline vapors. The oil companies recover that gasoline by putting the gas through absorption plants. They deliver the gas from those absorption plants to us at about 350 pounds pressure. That is compressed up to 500 pounds pressure at the Kettleman compressor station, which you will note on the lower part of the map.

All of these lines are tied together and form an integrated unit comparable in many respects to the

(Testimony of P. M. Downing.)

electric system which, as I have already stated, is tied together and operated as a single unit supplying the entire area that we serve.

By Mr. Phleger:

Q. Mr. Downing, what can you say with respect to the quality and character of the gas now supplied by the company [60] as compared with the manufactured gas supplied by it prior to 1929?

A. The natural gas has heat unit values ranging from about 1150 to 1175 down to about 925, depending upon what field the gas comes from.

The Kettleman gas runs about 1150 to 1175. Some of the smaller fields farther north have lower heat unit gas.

The manufactured gas which we formerly served had heat unit values of 550 to 575 B.T.U.'s. That is about as high heat unit gas as can be manufactured from the processes used here in this State where we make all of our manufactured gas from oil. We have no coal here and make no coal gas.

Q. What percentage of your gas customers are supplied with natural gas?

A. Perhaps 96 or 98 percent of all of our customers.

Q. What can be said generally as to whether your electric customers are also gas customers if they live in areas which are supplied by both?

A. Either service is available to the customers. Under our present organization setup we don't have separate salesmen for those two services. One sales-

(Testimony of P. M. Downing.)

man will go to a prospect and tell that prospect what can be done with gas, and he will also tell him what can be done with electricity. The selection of the service is made by the prospect.

Q. Is it not a fact that a large proportion of your [61] gas customers are also electric users?

A. Yes; it is safe to say that almost all of them are, a very large percentage. Gas is used very largely for heating because it has high heat units and our gas rates are very reasonable, and it is somewhat cheaper for customers to use gas for cooking and heating purposes than to use electricity.

Q. With respect to those areas which are not tied in with your general gas distribution system, how is that gas manufactured?

A. We have a few plants where we still manufacture gas. Those are in communities somewhat removed from our main gas lines and where the cost of extending the gas system to substitute natural for manufactured gas will not be justified by the volume of business to be had.

Q. Will you describe now the operations of the Pacific Gas and Electric Company in other than its electric and gas fields? For instance, your water service.

A. Yes. We supply water in a number of different places, particularly in Placer County, where the stored water, which supplements the natural flow of the streams, after passing through the dif-

(Testimony of P. M. Downing.)

ferent hydro-electric generating stations, is available for our water distribution systems in the lower areas.

We supply domestic water to a large number of communities, and we supply irrigation water in several different communities. [62]

Our largest irrigation supply system is in Placer County. We also supply some water, irrigation water, in Tuolumne County, some in Amador County and some in Butte County.

We operate a street railroad system in Sacramento. That is the only railroad system we have.

We supply steam heat in parts of San Francisco and in parts of Oakland.

Q. Do you perform any of these services that you have just mentioned in any territory other than that in which you perform electric or gas service?

A. No, no. All of our water is supplied in territory in which we serve electricity.

Q. So that all of the services given by the company are comprehended and included in the general territory that you have heretofore described as being covered by your electric and gas transmission and distribution lines, is that correct?

A. That is correct.

Q. Will you—you touched on it before—but will you go into perhaps greater detail of the question as to the properties of the company forming an integrated regional system?

(Testimony of P. M. Downing.)

A. The territory served by the company, as I have said, embraces a large number of counties in the north central part of the State. Those counties, that territory is completely covered with electric lines wherever there is any [63] demand for service.

We cover the larger cities and communities with gas.

Inter-connection of the entire system I have already referred to.

All of the power from whatever source is delivered into an inter-connected network of lines. The control operation and regulation of the entire electric system and the control operation and regulation of the gas system is handled through dispatching offices.

Our electric dispatching office is in Oakland. There we have dispatchers always on duty who direct the operations of the entire system. The authority of the load dispatcher, insofar as the giving of service is concerned, is supreme. No one, particularly in an emergency, would ever question the authority or the instructions given by the load dispatcher's office. In other words, the whole electric system is operated as a unit under the direct and immediate supervision of the load dispatcher's office. He is in direct communication with all of the power houses and all of the important switching and sub-stations over the entire territory. Authority must be had from the load dispatcher before any power house can be taken out of service, before any

(Testimony of P. M. Downing.)

line can be taken out of service, and before any change can be made in the load being carried by a given power house.

Q. So that one man in Oakland at any particular time [64] has full and complete control of more than one million and a half horsepower of generating capacity, and the flow of electricity through every mile of your entire system?

A. That is correct.

Q. Now, other large companies, Mr. Downing, pursue a different system, do they not, that is, of unified, not unified control, but a separated control?

A. Some companies operate their systems in separate units. We cover a very large area. We serve a very large area, perhaps a larger area than any other company in the country, and I think that our operations differ somewhat from those of other companies in that we operate everything as a unit over the entire territory.

That is true not only of our electric system, but it is also true of our gas system.

We have a gas dispatcher whose authority, with respect to the handling of our gas transmission system, is supreme. He determines what particular wells gas shall be taken from; he designates what lines shall be used, and he has complete control over the entire gas transmission system.

The Examiner: You stated, I believe, that the company does not own any producing wells?

The Witness: That is right.

(Testimony of P. M. Downing.)

The Examiner: That is, gas wells?

The Witness: No. We buy all of our gas. [65]

The Examiner: You have your transmission pipe lines run right to the wells from which you purchase the gas?

The Witness: We generally install the gathering lines, run them right to the wells, and the producing companies deliver to us at the wells.

The Examiner: It is the introduction of the gas to those gathering lines that you have just described that your gas dispatching office has control over?

The Witness: That is it. We take gas from perhaps hundreds of different wells and the producing companies have their royalty arrangements with the owners of the property, and we have to cooperate very closely with the producers in seeing that the right amount of gas is taken from the various wells.

By Mr. Phleger:

Q. Mr. Downing, you have long term contracts, have you not, with most of the owners of the producing wells?

A. Yes. Most of them run, that is, many of them run for the life of the field; others are for different periods of time, but generally we make them as long as we reasonably can.

Q. So that the building by you of these transmission lines and gathering lines into fields are protected by contracts generally for the life of the field? A. Yes. [66]

Q. Now, for the purposes of contrast, so we may

(Testimony of P. M. Downing.)

be absolutely accurate, I think you testified that the company did not own any gas wells. I direct your attention to the small subsidiary by the name of the Arlington Properties Company. Will you state what that company is?

A. It is a small subsidiary of the Pacific Gas and Electric Company. It does own, oh, one, two, or three wells down in the San Joaquin Valley.

Q. It is not a public utility, is it?

A. No, not a public utility.

Q. And the gas it produces is inconsequential as compared with the amount of gas purchased by the company? A. Almost negligible.

Q. Now, will you describe briefly the territorial extent of the company, that is, with respect to whether or not it constitutes an economic or geographic unit?

A. Yes, I think it does. It extends from Siskiyou County on the north down to and including Kern County on the south. Included in that area are the two large interior valleys, Sacramento and San Joaquin, which are really just one valley.

We supply power in the foothills of the Sierra for mining and other purposes, and we supply domestic and commercial lighting and industrial power in the more thickly settled areas. [67]

The territory is an economic unit, you might say. There are no isolated areas that are not connected with the main part of our system.

(Testimony of P. M. Downing.)

Q. Is it a fact that the great central valleys in general clear their products through the San Francisco Bay area? A. Yes, they do.

Q. And that the distribution and manufacturing for the central valley area is also in the Bay district?

A. The Bay area is the market place, you might say, for the products that are raised in the two interior valleys.

Q. Now, can you summarize the advantages accruing from one company serving this entire area?

A. Well, first, it avoids the economic waste inevitably under competitive conditions.

It gives a highly diversified load thereby permitting a maximum use being made of existing facilities, and by building up the volume or density of business in the area served the cost of rendering service is reduced, which reductions are in turn refunded in lower costs of service to the ultimate users.

Q. Will you elaborate on the item of diversification? Is the agricultural load to a certain extent complimentary to your city and manufacturing load?

A. The agricultural load is largely irrigation pumping. [68] That comes on during the spring and summer months when the lighting load in the metropolitan areas is a minimum. The lighting load in the metropolitan areas is maximum when the irrigation pumping load is a minimum. So that that

(Testimony of P. M. Downing.)

one illustration, I think, will indicate the advantage that comes from operating the entire system as a unit, supplying every kind and character of service, because we can make a greater use of existing facilities by having a highly diversified load than we could if we were supplying one particular kind of service, say, irrigation pumping, or industrial power, or lighting only.

Q. Now, Mr. Downing, do economies result from the tying in on one unified service of hydro-electric plants scattered over a large geographical area with steam plants?

A. Yes. By operating the two together it enables us to make a maximum beneficial use of the available water supply; the steam plants taking the peaks of the load which cannot be carried on the hydro-plants.

Q. Is that true also to a degree with the hydro-plants themselves?

A. Yes. By operating with all of the hydro-plants, in fact all of the plants feeding into a common network of lines, it is the usual practice to allocate a certain definite load to the individual water power plants. In other words, if there is water enough to give, say, 50,000 kilowatts of power at a given plant the load dispatcher instructs that plant [69] to carry 50,000 kilowatts of load and he will designate one plant to take the load swings, that is, the load fluctuations, so that you can see that by blocking this load off to the individual plants the

entire water supply at those individual plants can be fully utilized and there is none going to waste.

Q. Do you have a considerable variation in the precipitation and available water supply at the different plants, hydro-plants, throughout your system?

A. Yes, there is quite a variation. The precipitation north is greater than it is farther south. For instance, in Shasta and Plumas, and those northern counties, precipitation is heavier than it is as you get farther south. Likewise, there is a variation, of course, from year to year in the amount of precipitation.

We maintain quite a large number of storage reservoirs at a number of our different properties where water can be impounded during the flood water periods of the year and then released to supplement the natural flow of streams during the summer and fall months when the natural stream flows are low. In some of the reservoirs we carry water over from one year to the next in anticipation of a possible shortage of rainfall during a given year.

Q. Does it sometimes happen in a single year that some of the areas where your plants are located will be more favored in rainfall and snowfall than others? [70]

A. Yes. That happens quite frequently and that means that the plants in the more favored areas are able to pull more load and make up the deficiency in the plants dependent on their water sup-

(Testimony of P. M. Downing.)

ply where there is sub-normal precipitation.

Q. And that constitutes an additional advantage, does it not, in having a unified system extending over a considerable area? A. Yes, it does.

Q. Will you briefly state the economic advantages which accrue through having a coordinated operation in both the gas and electric services?

A. Well, of course, the principal advantages are economic.

As I have stated before, it enables a company operating in that way to make a maximum beneficial use of existing facilities. That means, of course, keeping the capital investment down to a minimum.

Of course, by one company operating in a given territory you eliminate the inefficiencies that result from competitive conditions.

There is an advantage too in joint operation of electric and gas properties in that one man or one group of men handle the servicing for both classes of services. Instead of having one man go out and set electric meters, another man come along and set gas meters, why one man handles all that. [71] If there is a complaint, and there is a man in a given territory, that man is competent and qualified to answer the customer's complaint whether it be regarding gas or electricity.

Q. How about meter reading and bill collecting?

A. That, of course, is another great advantage, especially in bill collecting, because one collector handles everything.

(Testimony of P. M. Downing.)

Q. Mr. Downing, what fuel does the company use in its steam generating plants?

A. We are equipped to use either gas or oil. Our practice is, wherever gas is not needed to supply the public, we use the excess in our steam plants. If, however, our pipe lines are loaded due to a cold spell and a resultant heavy demand for gas, there may not be gas available for our steam plants and then we use oil.

We can change from one fuel to the other in just a moment's time. It is a matter of closing one valve and opening the other, when you change from one fuel to the other.

Q. Does that method of operation result in substantial economies?

A. Yes it does, because we can always keep a full load on our gas lines. With these quick changes that can be made from one fuel to the other it is possible and, as a matter of fact, we do change from one fuel to the other many times during a day when a pipe line is pretty well loaded up [72] to its limit.

Q. So that you not only, by that operation, are able to use your gas transmission faciliteis to the maximum, but you are also able to enjoy a fuel at almost the cost of production and transmission?

A. Yes.

Q. Now, with respect to the rate policies of the Pacific Gas and Electric Company, will you state generally what the policy of the company is?

(Testimony of P. M. Downing.)

A. The trend of rates, both gas and electric, has always been downward. Many rate reductions have been made and those rate reductions have been made possible by the more efficient methods of producing electricity and gas and by building up the volume of business on existing facilities, thereby keeping the capital investment per customer down to a minimum.

Q. Will you state the reduction in terms of dollars in the revenue accruing from sales of electricity and gas by the company during the years 1921 and 1940?

A. Starting with the year 1921 the following rate reductions have been made—and these figures are arrived at by determining, first, the revenue under existing rates and the revenue under reduced rates. The difference between those two figures represents the saving which I will give.

In 1921 there was an electric rate reduction of $3,000,000 [73] per year.

In 1923 there was another $3,000,000 rate reduction.

In 1928 there was a reduction of $2,418,900.

In 1930 there was a reduction of $3,020,000.

In 1932 there was a reduction of $650,000.

In 1936 there was a reduction of $4,000,000.

In 1937 there was a reduction of $3,095,000.

In 1939 there was a reduction of $2,225,000.

In 1940 there has been a reduction of $2,000,000.

(Testimony of P. M. Downing.)

This makes a total reduction during that period, in the electric department, of $23,408,900.

Now, gas reductions during that period were as follows:

In 1930, that was when we brought in natural gas which had approximately double the heating value of manufactured gas, and there was very little difference in the price charged for the natural gas as compared with the manufactured gas, there was a saving to gas customers of $8,173,000.

The Examiner: That is on the basis of the additional B.T.U.'s contained in natural gas as a weighted figure, I take it?

The Witness: Yes. In other words, that means this: That the gas customers, by the introduction of natural gas with its higher heat unit value, were able to make savings for a given amount of heat.

The Examiner: They got more for their money?

[74]

The Witness: More heat for the same money. For the same amount of heat that they had under the manufactured gas they saved $8,173,000.

The Examiner: All right.

A. (Continuing) In 1936 there was another gas reduction of $2,606,000;

In 1938 there was a reduction of $2,026,600.

In 1939 there was a reduction of $1,000,000.

In 1940 there was a reduction of $2,900,000.

That makes a total reduction, total economies resulting to customers during that period, of $16,705,600.

(Testimony of P. M. Downing.)

The Examiner: When you speak of this reduction, both as to electricity and gas, does that mean a reduction of amount of revenue to the company, or a reduction in rates on the products or a combination of those two elements, and the value that they get for the amount paid, such as you have described, that is, the additional heating value for the same amount of money?

The Witness: Lower rates which went into effect during those different years resulted in savings to customers and a corresponding loss in gross to the company.

The Examiner: I see.

By Mr. Phleger:

Q. Mr. Downing, would it be accurate to express it this way: That if your customers, electric and gas, in the [75] calendar year 1940 paid for electricity and for gas heat units, the rates that were in effect in 1921 they would spend $40,000,000 more?

A. Yes.

Q. That is, if the 1920 or 1921 rates were in effect this year the customers this year would have paid $40,000,000 more for the same quantity of electricity and heat units in gas than they did actually pay? A. Yes.

The Examiner: Just for the year?

Mr. Phleger: Per year.

By Mr. Phleger:

Q. And if you didn't change your rates next year there would be a similar $40,000,000 saving to

(Testimony of P. M. Downing.)

customers next year, and the same for 1942, and so on?

Miss Calkin: That is assuming your customers would be using the same amount of electricity and gas at those higher rates, is it not?

Mr. Phleger: That is not an assumption.

By Mr. Phleger:

Q. If you take the quantity of electricity and heating units in gas that were used this year and applied the 1920 rates to them your customers would pay $40,000,000 more in rates, is that not right?

A. Yes. [76]

Miss Calkin: But the theory of that rate reduction is that the customer uses more electricity and more gas because he gets a cheaper rate, so I say that is based upon the assumption that your customers would use in 1940 the same amount of electricity and would consume the same amount of gas which they did consume under the lower rates.

Mr. Phleger: That is right.

By Mr. Phleger:

Q. They not only do that, but they consume a great deal more because, as you say, one thing that makes the rate reductions possible is the increased consumption due to the reduced rates, which is a very lively factor, I take it, in the making of these reductions? A. Yes.

The Examiner: In other words, your point, Mr. Phleger, is that there is no assumption there, but that taking the amount of electricity and the heat

(Testimony of P. M. Downing.)

units that were consumed this year, they would have paid $40,000,000 more had the 1920 rates been in effect than they did pay under the present rates. But certainly there was more consumption now than there was in 1920.

Mr. Phegler: Yes.

The Examiner: And each reduction in rates probably stimulated some additional consumption.

Mr. Phleger: That is right. The company's gross [77] hasn't been reduced by that amount, but the amount that the customers would otherwise pay has been reduced by that amount.

The Witness: The $40,000,000 is both gas and electricity.

The Examiner: I understand.

By Mr. Phleger:

Q. Now, Mr. Downing, you have already spoken with respect to rural electrification. Would you mind giving us some of the figures with respect to the 1939 activity of the company in extending its rural electrification services?

A. During the year 1939 the company built 784 miles of rural electric lines, bringing the total at the end of 1939, that is the total mileage of rural lines, up to 27,000. The extensions made in 1939 increased the number of electrified farms by 1657. In other words, the 784 miles of new rural lines enabled us to give service to 1657 new customers.

We have done a great deal to encourage the use of electric power in rural communities. For in-

(Testimony of P. M. Downing.)

stance, we maintain a staff of 30 farm power advisors who are experts, you might say, on both electricity and farming. These men make approximately 45,000 calls on rural customers every year.

We also maintain a free irrigation pump testing service. In other words, these rural communities use a great many pumps for pumping irrigation water. We maintain a staff of engineers who go out and test these pumping installations to determine whether or not they are as efficient as they should be. Gen- [78] erally it results in pointing out to the customers the inefficient plants, plants where they are making an inefficient use of the electric service which they buy, and it enables them, without any cost for testing purposes, to improve the efficiency of their installation.

In 1939 we made 4,658 of these different pump tests. During the eight years since that service was inaugurated we have made 30,710 individual pump tests.

Our rural rates are among the lowest in the United States, our average rural rate being 1.6 cents per kilowatt hour compared with an average of 3.1 for the rest of the country.

Q. You have already, in response to a question, told of the award to the company for its rural electrification activities during 1939. The name of that award was the Thomas W. Martin Award, was it?

A. Yes.

The Examiner: Is that an annual award?

(Testimony of P. M. Downing.)

The Witness: Yes, an annual award.

Mr. Phleger: Mr. Examiner, I now offer in evidence a chart entitled "Pacific Gas and Electric Company Chart Showing Relative Cost of Electricity and Gas for Residential Use in San Francisco Compared with Rates in Effect January 1, 1920", as Applicant's Exhibit No. 8.

Miss Calkin: No objection.

The Examiner: It will be received in evidence and so [79] marked.

(The chart above referred to was marked Applicant's Exhibit No. 8 and received in evidence.)

By Mr. Phleger:

Q. Was Applicant's Exhibit No. 8 prepared under your direction?

A. Under my general direction; yes.

Q. Will you state what it shows?

A. It shows the reductions in rates, residential gas and electric rates, during the period from 1920 to 1940 based on rates as of 1920 at 100 percent. In other words, starting with 1920 rates as 100 percent, you will notice during the year 1920 an increase in the solid line there which represents electric rates. That increase continued until about the middle of 1921 at about 112 percent of the electric rates in effect at the beginning of 1920. It continued above the 100 percent line until 1923. That was a surcharge that was added to electric rates during the time of the World War.

(Testimony of P. M. Downing.)

However, beginning in 1923 you will notice quite a drop in rates—electric, I am speaking of now—in fact, in 1923 the electric rates were only about 82 or 83 percent of what they were in 1920.

They continued on a straight line basis until 1928 when there was another cut in electric rates, which brought the 1928 rates down to about 66 percent of what they were in 1920. [80]

The next reduction was in 1930 when there was another rate reduction.

Then it continued along a straight line until the early part of 1936 when another rate reduction was made, which brought the rates down to about 56 percent of what they were in 1920.

Another reduction in 1937 brought them down to slightly over 50 percent of what they were in 1920.

Then another reduction was made in 1939 and another in 1940, which made the domestic residential rates for electricity in 1940, 46.1 percent of what they were in 1920.

A similar situation obtains with the gas. There are some fluctuations there above the 100 percent line in the gas curves and some below. The explanation for that is that under some of our gas schedules the prices of gas change with the price of oil. So that as the price of oil went up the price of gas went up. That is true over until the end of 1925.

In 1925 it ran along on the 100 percent line until early in 1928 when there was a small reduction.

(Testimony of P. M. Downing.)

Another in 1929 and then a very substantial reduction in 1930. That is when natural gas was brought in.

The Examiner: That reduction there, if I understand this footnote correctly, takes into consideration the number of B.T.U.'s additional at this rate? [81]

The Witness: Yes. In other words, a saving to the customers due to a better quality of gas which we started serving during the latter part of 1929 and the early part of 1930.

The Examiner: Do you know whether or not as of that date there was an actual reduction in the rate paid or was there an increase in the rate paid?

The Witness: If anything schedules were slightly modified. I think perhaps there may have been a slight increase in some of the blocks, but very little if any. The rates were made substantial, as they were with the manufactured gas.

The Examiner: That which is reflected by this substantial reduction on the chart, Exhibit 8, is a result of the fact that there is a higher B.T.U. per cubic foot of the natural gas than that of the manufactured gas?

The Witness: Correct. We started to serve a better quality of gas and the customers didn't have to buy as much of it for the same amount of heat.

There was no change in gas rates then until the early part of 1936 when the cost to customers for a given amount of heat, as compared with 1920, was

(Testimony of P. M. Downing.)

only about 58 percent; and another reduction in 1938; another reduction in 1939, and the last reduction was in 1940, which brings the rates today—residential, I am speaking of now—down to where they are only 46.3 percent of what they were in 1920. [82]

The Examiner: If you have completed explanation of that chart we will take a short recess at this time.

Mr. Phleger: Yes.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [83]

The Examiner: We can resume the hearing now if you are ready.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 9 a chart headed "Organization Chart, Pacific Gas and Electric Company".

Miss Calkin: No objection.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 9.

(The chart above mentioned was marked Applicant's Exhibit No. 9 and was received in evidence.)

By Mr. Phleger:

Q. Referring to Exhibit 9, Mr. Downing, was that exhibit prepared under your direction?

A. Yes sir.

Q. Will you describe what it shows?

(Testimony of P. M. Downing.)

A. It is intended to show the organization setup of the company. Beginning at the top we have a Board of Directors of 15 members elected by the stockholders. As a matter of convenience we have the Executive Committee which handles many of the details which would otherwise go before the Board of Directors. There are 4 directors on the Executive Committee with the president as ex-officio member of the Board. The members of the Executive Committee are nominated by the president and elected by the Board of Directors. The Board of Directors elect the president. [84]

Reporting to the president you will notice on the left first is the vice-president and assistant to the president. He is the president's assistant; he has a considerable responsibility in connection with tax matters, with publicity and with personnel matters.

On the right is the vice-president, secretary and treasurer, who has to do with the corporate records of the company and the finances of the company.

Reporting to the president is the comptroller who has to do with auditing and matters of that kind.

General operations of the system are handled through the vice-president and general manager, and the vice-president and assistant general manager.

The territory in which the company operates is divided into 13 different geographic divisions. Each of those divisions is in charge of a division manager who is the company's representative of those various

(Testimony of P. M. Downing.)

divisions. Those division managers have their own operating forces; they have their own sales forces; they have a certain amount of engineering assistance, accounting and so on. In other words, each division is in some respects operated as a separate company, each of those division managers reporting to the vice-president and general manager.

Also reporting to the vice-president and general manager are a number of what I might call service departments. [85]

For instance, on the left there you will notice the chief engineer who handles technical matters in connection with the company's electric and hydraulic and structural activities. He reports directly to the vice-president and general manager and he also has contacts and acts in an advisory capacity to all of our various division managers.

Then, we have the engineer of electric operation. He is the general supervisor of all of our electric operations except the San Francisco division and East Bay division. Those two divisions are handled by the, or under the direction of the general superintendent of San Francisco and East Bay divisions. The reason for that is the system is so large that it is better, it can operate more efficiently by having a separate supervisor over the larger metropolitan areas here in San Francisco and Oakland.

Then, we have the engineer of general construction. That is a department that handles our major construction work, for instance, the construction of

(Testimony of P. M. Downing.)

a power house or an important transmission line, one involving a substantial investment and a substantial amount of work where the divisional organizations are not set up to handle work of that character. The engineer of general construction will take over any work that is assigned to him irrespective of what division it may be in. [86]

Over a period of a good many years we have had enough work under way to keep an engineering department and a general construction department busy practically all of the time.

Then, the next one to the right there is the vice-president in charge of public relations and sales. Perhaps that might better be called in charge of customer relations and sales, because that office formulates sales policies of the company and acts in an advisory capacity to all of our divisional—all of our division managers.

Then, we have the engineer of gas operations whose duty and responsibility corresponds to that of engineer of electric operations. He has general supervision over and acts in an advisory capacity to our division managers in so far as our gas distribution systems are concerned.

Then, we have the vice-president and executive engineer. The greater part of the time of that department is taken up in the study of rate schedules, operating results and other similar matters, also the valuation of properties and the land department also reports to him; that is, by the "land depart-

(Testimony of P. M. Downing.)

ment" I mean the department that has to do with the purchase and sales of lands, the acquisition of rights of way and so on.

I have already stated the general superintendent of San Francisco-East Bay divisions has general supervision [87] over the electric and gas operations in the San Francisco and the East Bay divisions.

Then, also reporting to the vice-president and general manager, on the right you will notice there "Purchases and Stores Manager". The head of that department has charge of all of our purchasing and general supervision over the material and supplies on hand.

Credit collection and stock sales manager, he has to do with the passing on the credit of various customers and the handling of delinquent accounts, et cetera.

The automotive engineer acts in a consulting capacity in connection with the automotive equipment which we have over the entire system.

The rate attorney devotes his entire time and attention to the preparation of applications and so on to the Railroad Commission, the handling of rate matters before the Commission and so on.

The general counsel has to do with legal matters of the company, publicity manager, handles all advertising, publicity releases and so on.

Personnel manager has to do with the employee records of the company, the employing of men for

(Testimony of P. M. Downing.)

the company and is a sort of liason officer between the individual employees and the general manager.

In the law department, or the general attorney, handles [88] routine legal matters that come up, defending suits, bringing condemnation actions, adjusting claims and so on.

The manager of the natural gas division has the general management of our gas gathering lines in the field and the high pressure gas lines over the system.

Q. Mr. Downing, does the company also maintain various committees?

A. Yes; in the upper right hand corner of this exhibit you will find a tabulation there showing on the left "Committee Members" headed by the president, vice-president and general manager, and so on down the line, listing a number of officers, department heads and others.

On the right of that tabulation you will see a number of committees, seven. The first there is the President's Advisory Committee. Now, following down under that column under the caption "President's Advisory Committee" you will see a black rectangle after the president's name. That indicates that the president presides at the meetings of the President's Advisory Committee.

The cross hatched rectangles indicate the officers or department heads which sit in on the President's Advisory Committee.

(Testimony of P. M. Downing.)

The next committee is the Engineering Committee. The vice-president and general manager is chairman of that committee and you will notice the various officers and [89] departmental heads who sit in on that committee, and the same is true of all of those committees.

In the next to the last column there under the heading "Employees Welfare Committee" you will notice that the last three groups who sat in on that committee are the president of the Pacific Service Employees Association, and the vice-president of the Pacific Service Employees Association, and seven members of the Pacific Service Employees Association.

The Employees Welfare Committee has to do primarily with matters affecting the welfare of the employees.

The vice-president in charge of public relations and sales is the chairman of that committee. They meet every month, or every five or six weeks, and the employees are well represented on that committee and free and open discussions are had on all matters that are brought before that committee by these seven members at large who, as I think I have already said, are elected by the employees themselves to represent them on this committee.

Central Safety Committee acts in an advisory capacity in suggesting ways, means and methods of improving the safety of employment.

(Testimony of P. M. Downing.)

Q. Mr. Downing, the President's Advisory Committee, what are its functions and how often does it meet?

A. That meets every week, every Monday afternoon, and all matters considered by that committee have to do with the [90] general policies or the major questions that come before the management of the company. The members of all these committees express their views freely and all of these committees are open forums for the expression of opinion by each and every member of the committee.

Q. Now, with respect to the Engineering Committee, what are its functions and how often does it meet?

A. It meets not at regular dates; sometimes it will meet two or three times a week; then, it may go by for a couple of weeks before important technical matters come up about such matters as decisions as to the construction of new facilities, such as power houses, transmission lines and so on, whether those power houses shall be hydro or steam, and matters having to do primarily with the physical property and operations of the company, and the same might be said of the Gas Engineering Committee which considers similar problems in the gas department.

Q. Now, what of the Research Committee?

A. The Research Committee is a committee appointed to consider suggestions made by the rank

(Testimony of P. M. Downing.)

and file of employees, looking toward either better methods of operation or more economical methods of operation. Over a period of a good many years the company has offered prizes to employees who have made suggestions which the Research Committee may consider meritorious, and those suggestions when and as they come in [91] from the outside employees are considered by the Research Committee. I might say that we have hundreds of such suggestions come in every year; many of them have considerable merit; some have less merit.

Q. What of the Appropriations Committee?

A. The Appropriations Committee has referred to it all estimates covering expenditures for either new work or the reconstruction of existing properties. They review these, what are called "G.M. Estimates", general manager's estimates and it gives the various department heads the opportunity of knowing what expenditures are contemplated and it also gives them the opportunity of making any suggestions if they think that the expenditure is not necessary or that something different from what is proposed should be done.

Q. Mr. Downing, you have testified to the personnel of the Executive Committee. Do any of the officers of the company, other than those who are officially members of the Executive Committee, meet with it? A. Yes.

Q. How often does the Executive Committee meet? A. Every week.

(Testimony of P. M. Downing.)

Q. And which members of the company, which executives of the company, other than the president, meet regularly with the Executive Committee?

A. The vice-president and general manager, the [92] vice-president and assistant general manager, the vice-president and assistant to the president and the vice-president secretary and treasurer.

Q. And do they participate in the discussions with the Executive Committee? A. Yes sir.

Q. Where is the company's office?

A. The company's general office is at 245 Market Street, San Francisco.

Q. How long has it been there?

A. Between 15 and 20 years.

Q. Prior to that where was it?

A. At 447 Market Street—445 Market Street.

Mr. Bosley: Sutter.

The Witness: Sutter, I should say.

By Mr. Phleger:

Q. Prior to that?

A. It was in the Convent up here at Ellis and Franklin Streets.

Q. That is after the fire?

A. After the fire, yes.

Q. During the 40 years that you have been with the company has the company ever had a principal office other than in San Francisco? A. No.

[93]

Q. Where do the Board of Directors meet?

A. 245 Market Street.

(Testimony of P. M. Downing.)

Q. Where does the Executive Committee meet?

A. 245 Market Street.

Q. During the time that you have been with the company has the Board of Directors or the Executive Committee ever met any place other than in San Francisco? A. Not to my knowledge.

Q. Does the company maintain—well, you have already testified.

What is the nature of the work of the purchasing agent of the company?

A. The purchasing agent handles all purchases of materials and supplies of whatever kind or character. He also has general supervision over the material and supplies which the company has on hand in its various warehouses.

Q. Has the company ever participated with any other company excepting its own subsidiaries in any joint purchasing arrangement?

A. No, never.

Q. Does the company purchase all of its supplies through its own purchasing department?

A. Yes sir.

Q. Now, with respect to the engineering and construction [94] departments of the company, does it maintain itself at its own headquarters a complete engineering and construction department?

A. Yes sir.

Q. Does the company do all its own engineering?

A. Yes, it does all its own engineering.

(Testimony of P. M. Downing.)

Q. Does the company do all its own construction?

A. Not all of its own construction. It contracts some work, but we have a construction organization. We do a substantial amount of construction work ourselves, but there are certain jobs which are let out by contract and supervised by our own general construction department.

Q. Are these firms to whom contracts have been let affiliated or associated with any other public utilities? A. Not that I know of.

Q. Just general contractors?

A. General contractors, yes.

Q. Can you state some of the major construction projects which the company has engaged in since 1920 and on which it has performed the engineering and construction work?

A. Some of those projects since 1920 are the following: Pit 1 Power House and Tunnel representing an expenditure of $7,500,000; Vaca-Dixon Sub, $1,500,000; Pit No. 3 Tunnel Dam and Power House representing an investment [95] of $11,000,000; Salt Springs Dam, representing an eight million dollar investment; Tiger Creek Conduit, representing an investment of four and a half million dollars; Tiger Creek Power House, an investment of three million dollars; the Pit Vaca-Dixon Transmission Line $6,000,000; 250,000 kilowatt steam units here in San Francisco, eight million dollars; two new turbine units in Oakland, seven million

(Testimony of P. M. Downing.)

dollars; two natural gas lines, Milpitas to San Francisco, $2,750,000; Stan-Pac Line from—

The Examiner (interposing): That is a pipe line?

The Witness: Gas pipe line, yes. Kettleman to Tracy Junction five and a half million dollars; Kettleman Compressor Station $1,250,000; Stanislaus Tunnel, 11-½ miles, two and a half million dollars; Colgate Tunnel, 4½ miles, $1,250,000.

We have under construction at the present time, some of the work being done by our own forces and some by independent contractors under the general supervision of our own construction department, a 50,000 kilowatt steam electric unit at Avon representing an investment of $5,000,000; another 50,000 kilowatt steam unit at Martinez representing an investment of five million dollars, and a third 50,000 kilowatt steam unit at Oleum representing an investment of five million dollars. [96]

Those are some of the major jobs.

Mr. Phleger: I will offer as Applicant's Exhibit next in order—

The Examiner: 10.

Mr. Phleger: A map of the Pacific Gas and Electric Company showing its divisions as of November 1940.

The Examiner: Without objection it will be received in evidence and marked Applicant's Exhibit 10.

(The map above refered to was marked Applicant's Exhibit No. 10 and was received in evidence.)

(Testimony of P. M. Downing.)

By Mr. Phleger:

Q. Referring to Exhibit 10, Mr. Downing, was that exhibit prepared at your direction?

A. Yes sir.

Q. And are the facts which it purports to show correctly delineated? A. They are.

Q. Will you explain what the exhibit shows?

A. This exhibit is intended to show the geographic boundaries of the various devisions of the company which are under the general direction of the division managers, as I pointed out on the organization chart.

On the extreme north we have Humboldt and Shasta, North Bay and DeSabla, Colgate, Drum, Sacramento, Stockton, [97] East Bay, San Francisco, San Jose, Coast Valleys and San Joaquin Power.

The Examiner: Within that outline of the San Joaquin Power there is another figure also outlined in red.

The Witness: That is an area which we do not serve. That is served by the Southern California Edison Company.

Those various divisions cover the entire territory in which we operate. As I have already stated, they are under the general supervision of division managers and each functions to some extent as independent organizations, coordinated, of course, through the general office.

(Testimony of P. M. Downing.)

By Mr. Phleger:

Q. Mr. Downing, are any of the public utility properties of the Pacific Gas and Electric Company located outside the State of California?

A. None at all.

Q. Does the Pacific Gas and Electric Company transact any of its public utility business outside of the State of California?

A. None at all.

Q. Does Exhibit 10 show geographically the area within the State of California in which all of the public utility properties of the company and all of its business is located? [98] A. Yes sir.

Q. Do you know the company whose name is Vallejo Electric Light & Power Company?

A. Yes sir.

Q. Does the Pacific Gas and Electric Company own any stock in that company? A. Yes.

Mr. Phleger: May I ask a short adjournment? There is an important message for me.

The Examiner: Surely. Do you want to recess for the day?

Mr. Phleger: I think we might go on a little further.

The Examiner: All right, we will have a short recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: We will go ahead with the hearing.

(Testimony of P. M. Downing.)

Mr. Phleger: May I have the last question?

(The last question and answer were read by the reporter.)

By Mr. Phleger:

Q. Approximately what percentage of it?

A. That is the Vallejo company you are speaking of?

Q. Yes.

A. Forty-five and eight tenths per cent of the stock [99] of the Vallejo company is owned by Pacific Gas and Electric.

Q. Do you know who owns the balance of the stock? A. It is owned by the Gaspar family.

Q. Does the Pacific Gas and Electric Company have representation upon the board of that company? A. Yes.

Q. How many representatives does it have?

A. Two of the five directors.

Q. Does the Pacific Gas and Electric Company control the management or policies of the Vallejo Company? A. No.

Q. Where are the physical properties of the Vallejo company located?

A. In the City of Vallejo.

Q. Does it conduct any business or does it own any properties outside the confines of the State of California? A. Not that I know of, no.

Q. Now, in this Exhibit 10, the object of it was

(Testimony of P. M. Downing.)

merely to show, was it not, the geographical limitations of the various divisions of the company?

A. That was the purpose of the exhibit, yes.

Q. There are certain areas and certain cities within the outer confines of the various divisions where some service is supplied by other agencies, is there not, such as Vallejo, for instance? [100]

A. Yes; they sell to the individual customers, but we supply power to the City of Vallejo, or to the Vallejo Light & Power Company at wholesale and they distribute it.

Q. That is true also, is it not, with the City of Palo Alto? A. Yes, quite a large number of—

Q. (interposing) And true also of the Coast Counties Gas & Electric? A. Yes.

Q. It buys a large amount of its energy from you? A. All from us.

Q. All from you.

Mr. Bosley: Roseville?

A. I will correct that. They do have a small water power plant down in the Santa Cruz mountains from which at certain seasons of the year they can produce a small amount of power themselves, but the greater part of it, by far the greater part of their requirements are purchased from us.

By Mr. Phleger:

Q. In the amended and supplemental application of the company it is set forth on page 2 that the company owns 100 per cent of the voting power in Arlington Properties Company, Limited.

(Testimony of P. M. Downing.)

A. Yes. That is correct.

Q. Will you state what the Arlington Properties [101] Company, Limited, is?

A. That is a company that owns some real estate, non-operative real estate, which serves no useful purpose in connection with the utility operations of the Pacific Gas.

Q. It has a subsidiary, has it?

A. Yes, Crystal Lake Company, Limited, which is a company we took over. It owns a ranch up in Shasta County which we acquired in order to get control of certain water.

Q. Are either of those companies public utilities? A. Neither, no.

Q. Are all of their properties located in the State of California? A. Yes sir.

Q. The San Joaquin Light & Power Corporation, 99 and eight tenths per cent of the voting stock is owned by the Pacific Gas and Electric Company. Is that company now engaged in the public utility business?

A. No, no; it is out of the public utility business, I would say.

Q. You have acquired all of its property, have you not?

A. We have acquired all of its properties and have transferred those properties to Pacific Gas and Electric Company.

Q. And you own all of the stock with the exception of [102] a very small number of shares of

(Testimony of P. M. Downing.)

common stock which are engaged in litigation, is that not right? A. That is correct, yes.

Q. Now, the Standard Pacific Gas Line, Incorporated, you have already testified that you own 50 per cent of the stock of that company.

A. That is correct.

Q. Is it a public utility?

A. No, it is not a public utility, but we have considered our investment in that company as a public utility investment.

Q. Are all of the properties of that company located in the State of California?

A. Yes sir.

Q. The Vallejo Electric Light & Power Company you have already mentioned.

A. Yes sir.

Q. All of its properties are located in the State of California? A. Yes.

Q. The Vallejo Electrical Supply Company?

A. Valley.

Q. Valley Electrical Supply Company?

A. That is an appliance sales company operating in Fresno. It sells appliances at both wholesale and retail. [103]

Q. Is it a public utility? A. No.

Q. Does it own any property outside the State of California? A. No.

Q. The Western Canal Company is shown in the application and it is stated that the Pacific Gas

(Testimony of P. M. Downing.)

and Electric Company owns 85 per cent of the voting power. Is that company a public utility?

A. Yes, supplying water to the public.

Q. And where are its properties located?

A. It takes water out of the Feather River a short distance below Oroville. The canal runs off in a general westerly direction through Butte and Sutter Counties.

Q. Are all of its properties located in the State of California? A. Yes.

Q. Does the Valley Canal Company engage in any business other than the transmission and sale of water? A. What company did you say?

Q. The Western Canal Company?

A. No, no.

Q. It is not a public utility within the meaning of the Public Utility Holding Company Act of 1935, is it? [104]

A. No, I understand not, although I am not familiar with the definition of the term "public utility" as it is used in that Act.

Q. I will read the definition: "'Public-Utility Company' means an electric utility company or a gas utility company." A. No.

Q. This company neither conducts an electric nor gas business, does it?

A. It sells water only.

Mr. Phleger: If it is convenient, I suggest this is an appropriate time to adjourn.

(Testimony of P. M. Downing.)

The Examiner: We will recess until tomorrow morning at 10 o'clock. We will resume the hearing in this room.

(Whereupon at 4:15 p. m., the hearing in the above-entitled matter was adjourned to November 13, 1940 at 10:00 a. m.) [105]

Room 403, Civic Auditorium Building,
San Francisco, California,
Wednesday, November 13, 1940.

Met, pursuant to adjournment, at 10:00 o'clock a. m. [106]

PROCEEDINGS

The Examiner: The hearing in the matter of the P. G & E. will resume.

Are you ready, Mr. Phleger?

Mr. Phleger: Yes.

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. Downing, Exhibit 10 of the Applicant shows the territorial limits of the various divisions of the company. Someone might inadvertently consider, because of the fact that those divisions cover

(Testimony of P. M. Downing.)

all of the territory within their outer confines, that there are no other utilities selling electricity in those areas.

Have you prepared a statement showing the privately owned utilities and the publicly owned utilities which serve in various portions of those areas?

A. Yes.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 11 two sheets headed "Pacific Gas and Electric Company sales to other utilities for resale." [107]

Miss Calkins: No objection.

The Examiner: The document will be received in evidence and marked Applicant's Exhibit 11.

(The two sheets mentioned above were marked Applicant's Exhibit No. 11 and were received in evidence.)

By Mr. Phleger:

Q. Mr. Downing, was Applicant's Exhibit 11 prepared under your direction? A. Yes sir.

Q. Are the facts shown on it true and correct?

A. Yes sir.

Q. Will you state what that exhibit shows?

A. It shows the privately owned electric utility companies to which the Pacific Gas and Electric Company sells power for resale by those various companies. It also shows the kilowatt hours sold to those various companies during the five years 1935 to 1939, both inclusive.

(Testimony of P. M. Downing.)

The second sheet shows the publicly owned utilities to which Pacific Gas and Electric Company sold power for resale by those publicly owned utilities in the various communities. It also shows the kilowatt hours billed to those various publicly owned utilities during the five years 1935 to 1939, both inclusive.

Q. Have you any other comments or observations to make upon it? [108]

A. In none of these—none of the areas in which these resale companies distribute electric energy are we in competition with those companies. The last competitive situation was cleared up within the last year when the Pacific Company sold its electric distribution facilities in the Modesto Irrigation District to the district itself. The Modesto and Turlock Irrigation Districts do distribute energy within the confines of their respective districts. The two districts have a jointly owned dam and hydro-electric installation on the Tuolumne River.

The Turlock's share of the energy produced at that plant is sufficient to meet all of their requirements. The Modesto's share, however, is not sufficient to meet the requirements of that district so that the Modesto District is a purchaser of power from Pacific Gas to supplement their own production.

I might also add that there are two or three—I haven't in mind the exact number at the moment—utility companies operating in the northern part of the state in areas not presently covered by the lines

(Testimony of P. M. Downing.)

of Pacific Gas and Electric Company. I have in mind a company operating over in Fort Bragg. They distribute there in the town of Fort Bragg obtaining their power, as I understand, from some of the lumber mills there using waste material for fuel.

Then, there is another small concern supplying a very [109] limited area in Benbow and Garberville. That area is rather isolated and our lines are not in there at the present time, so that we are not prepared to supply them. We have, however, gone over the situation a number of different times because both of those companies have been quite anxious to get us to build lines in there and sell them power.

The Examiner: All of these companies appearing on both of these pages in Exhibit 11 are within the area outlined in Exhibit 10 and is the territory served by your company?

The Witness: Yes. In other words, these are wholesale customers as distinguished from the retail customers.

By Mr. Phleger:

Q. Mr. Downing, in paragraph 3 of the Amended and Supplemental Application of the Pacific Gas and Electric Company it is alleged as follows:

> "On June 30, 1936, said Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great West

(Testimony of P. M. Downing.)

ern Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company, having previously wound up their affairs and distributed their operating properties and other assets to Pacific Gas and Electric Company were finally dissolved.

"Midland Counties Public Service Corporation, [110] having previously wound up its affairs and distributed its operating properties and other assets to Pacific Gas and Electric Company, was finally dissolved on or about December 28, 1939.

"San Joaquin Light & Power Corporation is now in process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to minority common stockholders whose rights have not yet been judicially determined. Said San Joaquin Light & Power Corporation is no longer a public utility company and neither owns nor operates any gas or electric properties and conducts no public utility business.

"The distribution of assets of each of the aforesaid corporations was made under authority of an order of the Railroad Commission of the State of California."

(Testimony of P. M. Downing.)

Are the allegations which I have just read true?

A. They are true and correct.

Q. Mr. Downing, are you a stockholder in the Pacific Gas and Electric Company? A. Yes.

[111]

Q. How many shares do you own?

A. I own 2,027 shares of common stock and 2,624 shares of preferred stock.

Q. When did you acquire this stock?

A. I acquired that at various times over a period of 25 years.

Q. Have you ever sold any stock of the Pacific Gas and Electric Company?

A. I sold some in 1929, or about that time.

Q. Are the shares which you hold now greater in number than you have held at any previous time?

A. Yes.

Q. Do you own any stock in the North American Company? A. No, none at all.

Q. Have you ever owned any stock in the North American Company? A. No.

Q. Do you own any stock in any subsidiary of the North American Company? A. No.

Q. Have you ever owned such stock?

A. No, none at all.

Q. Who first suggested to you becoming a director of the Pacific Gas and Electric Company?

A. A. F. Hockenbeamer, who at that time was president [112] of Pacific Gas and Electric.

Q. Who first suggested to you the matter of

(Testimony of P. M. Downing.)

becoming vice-president and general manager of the company? A. Mr. Hockenbeamer.

Q. Since your election as a director of the company in August of 1929 have you attended meetings of the Board of Directors regularly? A. Yes.

Q. Have you also during that period attended regularly the meetings of the Executive Committee?

A. Yes sir.

Q. Are matters which come before the Board of Directors of the company freely and fully discussed? A. Yes.

Q. Does any director or group of directors dominate the meetings of the Board? A. No sir.

Q. Have you ever hesitated to express freely at any meeting of the Board your own views upon subjects brought before the meeting?

A. Never.

Q. Have you ever at any meeting of the Executive Committee hesitated to express freely and fully your views? A. No.

Q. Were you acquainted with Mr. Frank Dame?

[113]

A. Yes.

Q. An officer of the North American Company now deceased? A. Yes, I knew him.

Q. Were you acquainted with Mr. Edwin Gruhl, an officer of the North American, now deceased?

A. Yes sir.

Q. Are you acquainted with Mr. F. W. Doolittle? A. Yes.

(Testimony of P. M. Downing.)

Q. Formerly an officer of the North American Company and a director of Pacific Gas and Electric Company? A. I am, yes.

Q. Are you acquainted with Mr. Fogarty and Mr. Freeman who are now officers of North American Company and now directors of Pacific Gas and Electric Company? A. Yes sir.

Q. When did you first become acquainted with those gentlemen?

A. Shortly after the taking over by Pacific of the stock of the Great Western and San Joaquin and the Midlands.

Q. That was in 1930? A. 1930, yes.

Q. How frequently have you come in personal contact with any of those men?

A. Oh, perhaps not more than half a dozen times. [114]

Q. Have you ever had any correspondence with any of them? A. No.

Q. Did any of those men ever visit San Francisco?

A. I think they have all been in San Francisco with the possible exception of Mr. Freeman; I understand he has never been in California.

Q. Do you recall any of those men having attended directors' meetings of the Pacific Gas and Electric Company?

A. I think maybe Mr. Gruhl attended one or maybe two meetings, when he happened to be here in California, and also Mr. Fogarty has attended

(Testimony of P. M. Downing.)

perhaps one or two meetings. I don't recall whether Mr. Doolittle ever attended a meeting or not. Mr. Freeman has never attended a meeting.

Q. In the dozen or so times that you have seen these gentlemen have they ever discussed with you the business and affairs of the Pacific Gas and Electric Company?

A. Only in a very casual way, may have been mentioned during the course of our casual conversations.

Q. Have you ever been requested by any of these gentlemen or anyone else connected with the North American Company to vote in any particular way or to take any particular action as a director, officer, or otherwise of the Pacific Gas and Electric Company? A. Never by anyone. [115]

Q. Have you ever loaned Pacific Gas and Electric engineers or experts to the North American Company? A. No.

Q. Has the North American Company ever loaned any engineers, experts or other employees to the Pacific Gas and Electric Company?

A. No.

Q. Have you ever received requests, instructions, or help from the North American Company or any of its officers or representatives in any engineering, rate proceedings, sales matters, or otherwise? A. None whatever.

Q. Have you ever received any requests, instructions or help from the North American Company

(Testimony of P. M. Downing.)

or any of its agents or representatives in any matters involving depreciation?

A. None whatever.

Q. Maintenance? A. No.

Q. Salaries? A. No.

Q. Accounting? A. No.

Q. Dividend actions? A. No.

Q. Personnel? [116] A. No.

Q. Did you know Mr. Guy E. Earl in his lifetime? A. Yes sir.

Q. Was he a director and member of the Executive Committee of the Pacific Gas and Electric Company for a period? A. Yes sir.

Q. When he was a member of the Board of Directors and of the Executive Committee did Mr. Earl take any prominent position or prominent part in the deliberation of those bodies?

A. The same as any other member of the Board or the Executive Committee.

Q. Did he take any more prominent position than any other director. A. No.

Q. Did he, during his service upon the Board and upon the Executive Committee, ever request or instruct you or any other member of those bodies to act in any particular way? A. No sir.

Q. How long have you known Mr. J. B. Black, president of the company?

A. Oh, perhaps 20 years, maybe 25.

Q. Did you know him before be became associated with [117] the North American Company in 1927? A. Yes sir.

(Testimony of P. M. Downing.)

Q. What position did he occupy before he became associated with the North American Company in 1927?

A. Well, he was with the Great Western Power Company. I don't recall just what his title was. I think it was vice-president and general manager.

Q. You have already testified that the Great Western Power Company was in active competition with the Pacific Gas and Electric Company.

A. Yes sir.

Q. Was Mr. Black one of the active parties in that competition? A. Yes sir.

Q. And in the course of that competition did you come frequently in contact with him?

A. Yes sir.

Q. You knew him personally? A. Yes sir.

Q. Were on terms of friendship, if not intimacy with him? A. We were friendly competitors.

Q. Yes sir. Now, Mr. Downing, I believe you testified that the Pacific Gas and Electric Company acquired a majority stock of the Great Western Company and the San Joaquin [118] Company in the early part of 1930. At that time was Mr. Black connected with the North American Company? A. Yes sir.

Q. And did he conduct in behalf of the North American Company the negotiations which led up to the execution of a contract whereby North American Company sold and the Pacific Gas and Elec-

(Testimony of P. M. Downing.)

tric Company acquired the securities I have just mentioned? A. Yes sir.

Q. Following that transaction did Mr. Black become a director of the Pacific Gas and Electric Company? A. Yes, I think he did.

Q. During the period from the acquisition by the Pacific Gas and Electric Company of these securities up until Mr. Black's election as president of the Pacific Gas and Electric Company in November 1935, do you know where his offices were?

A. In New York.

Q. He was an officer of the North American Company with his office in New York?

A. Yes sir.

Q. During that period did you see Mr. Black frequently?

A. Not frequently. I would generally drop into his office when I happened to be in New York and I generally saw him when he was in San Francisco.

[119]

Q. Do you know how often he would come to San Francisco?

A. Perhaps once every year or two.

Q. And how frequently would you be in New York?

A. Possibly once, maybe twice a year.

Q. During that period do you recall having communicated with Mr. Black on business matters affecting the P. G. & E.?

(Testimony of P. M. Downing.)

A. No, I had no communications with him whatever.

Q. During that entire period did he make any requests or suggestions to you with respect to the management, policies, or operations of the Pacific Gas and Electric Company?

A. None whatever.

Q. Did he ever suggest to you that you take any particular action as a director or member of the Executive Committee or as an officer of the Pacific Gas and Electric Company? A. No.

Q. Who first took up with you, Mr. Downing, the matter of Mr. Black's election as the president of the Pacific Gas and Electric Company?

A. Mr. C. O. G. Miller and Mr. Fred Elsey.

Q. Was the matter of his selection and election as president discussed by the directors informally before the meeting at which he was actually elected?

A. Yes sir. [120]

Q. And discussed with you? A. Yes sir.

Q. And was there general agreement between the directors respecting his election before the formal meeting was held at which he was elected?

A. Yes sir.

Miss Calkin: I think that since this is a rather important part of this examination that I will have to object to the leading questions by counsel for the Applicant.

Mr. Phleger: Well, I ask your indulgence; I was trying to save time.

(Testimony of P. M. Downing.)

Miss Calkin: I think the witness can tell what happened concerning Mr. Black's election.

The Examiner: All right. Proceed, Mr. Phleger.

Mr. Phleger: Well, suppose we adopt the suggestion of counsel.

By Mr. Phleger:

Q. Will you please tell what you know about the election of Mr. Black as president of the Pacific Gas and Electric Company, that is, what you personally know about.

A. The matter was discussed informally between Messrs. C. O. G. Miller, Fred Elsey and Allan Chickering before the meeting as which Mr. Black was elected president. They told me that they thought that Mr. Black was well qualified to handle the work and that they had decided that he would be [121] placed in nomination at the next meeting of the Board.

Q. And you were present at the meeting of the Board of Directors at which he was elected, were you? A. Yes sir.

Q. And was the vote unanimous?

A. Yes, it was.

Q. Do you remember the circumstances surrounding the acquisition of the stock of the Great Western and San Joaquin Companies in 1930 by the Pacific Gas and Electric Company?

A. Yes; I didn't sit in on the negotiations which led up to the taking over by Pacific Gas of that stock. Mr. Hockenbeamer and Mr. Black handled

(Testimony of P. M. Downing.)

those negotiations, but my office was adjoining Mr. Hockenbeamers and the matter was discussed between us on many different occasions.

Q. You were a member of the Board of Directors at the time of that acquisition, were you not?

A. Yes sir.

Q. Did you vote in favor of it?

A. Yes sir.

Q. And you also attended the meetings of the Executive Committee at that time, did you not?

A. Yes, I did.

Q. Was the matter fully discussed over a considerable period by the Executive Committee?

A. It was discussed on many different occasions. [122]

Q. Was anything said during those discussions as to the status of the North American Company as a stockholder in Pacific Gas and Electric Company after the transaction?

A. Yes, there was a great deal of discussion over the possible result of any one stockholder coming into possession of a substantial block of stock. There was a strong sentiment in the Board, and so expressed by different members of the Board against any control of Pacific Gas and Electric Company affairs passing from California, or from San Francisco to the East. That was a very important matter and discussed on many occasions when the consolidation was under consideration.

(Testimony of P. M. Downing.)

Q. Was any representation made to the Executive Committee and the Board of Directors by Mr. Hockenbeamer as to what the position of North American Company would be as a stockholder after the transaction?

A. Yes. It was very definitely stated that there would be no change in the control of Pacific Gas affairs. The management policy had always been handled here in San Francisco and it was stated very definitely by Mr. Hockenbeamer, who conducted these negotiations, that the control would continue to remain here in San Francisco and that North American would occupy the status of an investor.

Q. Was this representation made to the Executive Committee and the Board of Directors before it took action in [123] authorizing this transaction?

A. Yes sir.

Q. Did that representation form an essential basis for your own vote as a director in authorizing it?

A. It was a very important factor in me deciding personally how I would vote on the matter.

Q. Do you know whether or not the Board of Directors or Executive Committee would have approved this transaction unless that representation were made?

A. It is very doubtful if it would have been approved because Mr. Hockenbeamer stated on many different occasions that he would not recommend,

(Testimony of P. M. Downing.)

but would oppose any consolidation if it took control of Pacific Gas and Electric affairs from San Francisco and transferred them East.

Q. Did other members of the Board of Directors express their views on the same subject?

A. Yes sir.

Q. And what views were expressed?

A. Mr. Frank B. Anderson, who at the time was a member of the Board, was very definite in his position that the management of the company should remain in San Francisco. Similar expressions came from other members of the Executive Committee, Mr. Chickering, Mr. Miller and, in fact, everyone. I don't think there was a single man who would have favored [124] the consolidation if it had been known or had been thought that the control of Pacific Gas affairs might be transferred to New York.

Q. Had the matter of this acquisition been discussed over a considerable period by the Board and by the Executive Committee before it was finally consummated? A. Yes sir.

Q. Do you know approximately how long these negotiations had continued, I mean, the ones that led up to the transaction?

A. I don't recall exactly, but I would say it was a matter of two or three months.

Q. After this transaction n 1930 was there any change of any kind in the management or policies of the company? A. None whatever.

(Testimony of P. M. Downing.)

Q. Continued exactly as before, did it?

A. As it had always been.

Q. After Mr. Black became president of the company in 1935 was there any change in any of the management policies of the company which had theretofore existed? A. No.

Q. Has your authority been restricted or circumscribed in any way since the election of Mr. Black?

A. No; to the contrary I might say it has been [125] increased somewhat.

Q. Has the authority of any of the officers of the company been either altered or restricted since the advent of Mr. Black?

A. None have been restricted.

Q. And if there has been an alteration it has been in the direction of enlargement rather than restriction, is that correct? A. Yes, correct.

Q. During the period from 1930 to date, Mr. Downing, have you observed anything which would indicate the exercise of any control or influence by the North American over the affairs, management, or policies of the Pacific Gas and Electric Company? A. No, absolutely nothing.

Q. Has the Pacific Gas and Electric Company ever exchanged operating information such as steam generating plant efficiency ratios and so forth with the North American Company or any of its subsidiary or affiliated companies?

A. No.

(Testimony of P. M. Downing.)

Q. Has any Pacific Gas and Electric officer or employee ever attended any meeting of the so-called Station Advisory Council of the North American Company or any other council or committee of the North American Company?

A. No, none at all. [126]

Q. Has the Pacific Gas and Electric Company ever had any contract or arrangement with the North American Company for the rendering of management service, legal, accounting, or any other similar service? A. None whatever.

Q. Has the Pacific Gas and Electric Company ever loaned any money to the North American Company? A. No.

Q. Has the Pacific Gas and Electric Company ever borrowed any money from the North American Company? A. No.

Mr. Phleger: I think that is all, Miss Calkin.

The Examiner: Do you want a short recess or are you ready to proceed with your cross examination?

Miss Calkin: It is 10:30. I will start.

The Examiner: All right, if you are ready, go ahead. Cross examine.

Cross Examination

By Miss Calkin:

Q. Do you know whether or not Mr. Martin and Mr. de Sabla, about whom you spoke yesterday, were some of the original incorporators of the Ap-

(Testimony of P. M. Downing.)

plicant? By the "Applicant" I mean the Pacific Gas and Electric Company.

A. Yes, I think they were the original incorporators.

Mr. Bosley: May I interrupt just a moment? [127]

I think if you will examine the original articles of incorporation that you will not find—I am not quite certain about it—but they were—

The Witness (Interposing): Very active.

Mr. Bosley: They were the ones who were primarily interested.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

Mr. Phleger: We are going to introduce shortly the original articles of incorporation.

Miss Calkin: I am not so much interested in who actually incorporated the company as who was primarily interested in it.

The Witness: They were very actively interested.

By Miss Calkin:

Q. Now, who are the other personalities in the Applicant's history during its most early days?

A. Well, Messrs. Martin and de Sabla were the two most active men. In the early day affairs of the company they incorporated these smaller companies and brought them together.

The Examiner: You meant, did you, at the in-

(Testimony of P. M. Downing.)

ception of the smaller companies which were the predecessors?

Miss Calkin: I am speaking only of the Applicant now. [128]

By Miss Calkin:

Q. From 1905 to 1910 who would you say were the major personalities in the Applicant's business?

A. Well, those two men were the moving spirits.

The Examiner: That is at the time of the organization of the original small companies, also at the time the Pacific Gas and Electric was incorporated in 19—what does that chart show—1905?

Mr. Gerdes: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: Did you understand that?

The Witness: I went back a little too far. Your question went from 1905 to 1910?

By Miss Calkin:

Q. Along that period.

A. Mr. Frank Drum was president of the company then, and I would say that he was the most important figure during that five year period which you have mentioned, although Messrs. Martin and de Sabla were also—

Q. (interposing) They continued to be—

A. (interposing) They continued active, but were less active because Mr. Drum was president at that time.

(Testimony of P. M. Downing.)

Q. Were you acquainted with Mr. Drum prior to 1905? A. With Mr. Drum? [129]

Q. Yes. A. No.

Q. Did you later hear what his business was? What connections did he have prior to the time he became president of the Applicant, if you know?

A. Well, he represented the Haggin & Tevis interests. They had large land holdings in the San Joaquin Valley.

Q. And were they some of the early owners of securities of the Applicant?

A. I understand they were large owners of the company securities.

Q. I have before me a list of the incorporators of the Applicant and I wish you would tell me what interests these various persons represent, if you know.

Garret W. McEnerney?

A. Mr. McEnerney is an attorney here in San Francisco who had considerable to do with the incorporation, I understand, of the P. G. & E. I don't know how much financial interest he had in the company at that time.

Q. John S. Drum?

A. He was a brother of Mr. Frank Drum.

Q. Was he a resident of the City of San Francisco? A. Yes sir.

Q. John A. Britton?

A. John A. Britton was president of California Gas & [130] Electric Corporation. Prior to the

(Testimony of P. M. Downing.)

time that he went with the corporation he had spent the greater part of his life with the Oakland Gas Light & Heat Company.

Q. Cyrus Pierce?

A. Cyrus Pierce at that time was an investment banker here in San Francisco.

Q. Did he later become associated with the firm of Pierce-Fair & Company? Is that the same Pierce?

A. That is the same man, yes.

Q. Carl Taylor?

A. I don't know Carl Taylor.

The Examiner: Off the record.

(Discussion outside the record.)

Mr. Bosley: Mr. Carl Taylor was a young lawyer associated with F. W. M. Cutcheon who was a prominent lawyer in New York and who was the advisor and attorney for N. W. Halsey & Company. Mr. Carl Taylor came out here to San Francisco and was here throughout the negotiations between the representatives of the California Gas & Electric Corporation and the representatives of San Francisco Gas & Electric Company, which were carried on from sometime early in 1905, I think in the spring of 1905 until option agreements were finally reached sometime in the autumn of 1905.

Mr. Carl W. Taylor did much of the legal work for N. W. Halsey & Company and Mr. Cutcheon came here on several [131] occasions, but Mr. Carl

(Testimony of P. M. Downing.)

Taylor was here as the local representative of Mr. Cutcheon in all of the legal proceedings which resulted in the organization of the Pacific Gas and Electric Company and its acquisition of the stock of the California Gas & Electric Corporation and the stock of the San Francisco Gas & Electric Company at or about the end of 1905 or the beginning of 1906. I think the stock of the San Francisco Gas & Electric Company, 90 per cent of it or more, something more than 90 per cent was actually transferred to the Pacific Gas, I think, the second of January, and it was at the beginning of the year that the Stock of the California Gas & Electric Corporation had been transferred to the Pacific Gas and Electric Company, a little bit earlier, sometime in December, I think it was.

The Examiner: You say the interest that he represented was Halsey & Co., that is the investment banker?

Mr. Bosley: F. W. M. Cutcheon was the New York counsel for N. W. Halsey & Co., and Carl Taylor was out here acting under his direction and as his representative as counsel for N. W. Halsey & Co.

The Examiner: All right.

By Miss Calkin:

Q. Mr. Downing, did you know George K. Weeks? A. Yes.

Q. Who was he? [132]

(Testimony of P. M. Downing.)

A. He was the San Francisco representative of some concern; I have forgotten now.

Mr. Bosley: He was with N. W. Halsey & Co. George K. Weeks and Cyrus Pierce and George Lewis were all in the employ of N. W. Halsey & Co., at the San Francisco office of N. W. Halsey & Co.

By Miss Calkin:

Q. Mr. Downing, did you know Frank D. Stringham? A. No, I didn't know him.

Q. You don't know now who he was?

Mr. Bosley: I can tell you about him.

A. Mr. Bosley can probably tell you; I don't know him. I don't know what his business was.

Mr. Bosley: Frank D. Stringham was a young lawyer here. He was doing some work for N. W. Halsey at that time.

By Miss Calkin:

Q. Who was Merrill O. Evans, or Merrill O. Evans, Jr.? A. (No response)

Mr. Bosley: I don't know him. I think he was connected with the office of Halsey & Co.

By Miss Calkin:

Q. Did you know Mr. Alexander N. Kemp?

A. Alexander N. Kemp? Yes sir.

Q. What was his business?

A. I don't know. [133]

Mr. Bosley: He was with Halsey & Co. at that time.

(Testimony of P. M. Downing.)

By Miss Calkins:

Q. Did you know Mr. Challen R. Parker?

A. No, I didn't know him.

Miss Calkin: Do you know who he was, Mr. Bosley?

Mr. Bosley: I am not quite certain. I think he was connected with Halsey & Co.

Miss Calkin: The last one is L. Foster Young.

Mr. Bosley. He was a clerk in Mr. McEnerney's office. I may add Mr. McEnerney at that time was general counsel for California Gas & Electric Corporation and had been for some years.

By Miss Calkin:

Q. Mr. Downing, you testified that the applicant purchased the properties of the California Telephone & Light Company. Does the Applicant still own and operate the telephone properties that were taken over at the time of that acquisition?

A. No; the telephone properties we afterwards sold to Pacific Telephone & Telegraph Company.

Q. Do you know whether or not the various properties that were acquired by the Applicant were set up on its books at the same figure as they were carried on the books of the acquired company?

Mr. Phleger: May I suggest that you defer that [134] question until the comptroller gets on because he is prepared on that.

Miss Calkin: Yes.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Mr. Downing, do you know why the negotiations, which you testified took place in 1922 in reference to the proposed acquisition of the securities of Western Power Corporation, were not consummated? A. No, I do not.

Q. Those were carried on by Mr. Creed?

A. Yes sir.

Q. Representing the Applicant?

A. Yes, Mr. Creed.

Why were the properties of the San Joaquin Light & Power Corporation and the Midland Counties Public Service Corporation, or the securities of those companies acquired in 1930 inasmuch as those properties were not in competition with the Applicant and there were not the same reasons, as I understand it, for the acquisition of those properties as there were for the acquisition of the properties operated by the Great Western Power Company of California?

A. I don't know that I could answer that question.

Q. Do you know whether or not there was any attempt to acquire only the securities of the Great Western Power Company of California in 1930?

[135]

A. No; I didn't sit in on those negotiations, but in all of the discussions had by the Board and by the Executive Committee, the three properties, that is, the Great Western, the San Joaquin and the Midlands, were all considered together.

(Testimony of P. M. Downing.)

Q. Do your own engineers do the designing work on your power plants and sub-stations?

A. Yes.

Q. And have you not on occasion appointed outside engineers to do such work?

A. No; we have at various times employed consulting engineers to pass upon particular units of work, but I don't know that Pacific Gas has ever had any outside engineering firm do any engineering work for it.

Q. Has the Stone & Webster Engineering Corporation ever done any work for you and your company?

A. Not for Pacific Gas. They did some work for the Great Western Company.

Q. Prior to 1930? A. Yes.

Q. And none of the engineers employed by the subsidiaries of the North American Company have ever worked on any of Applicant's construction projects? A. No.

Q. I believe you testified, Mr. Downing, that you had never corresponded with any of the North American [136] representatives on the Applicant's Board. Have you ever had any correspondence with any representatives of the North American Company?

A. No, I don't recall any correspondence with any of them.

Q. Have you ever had any correspondence with representatives of any of the subsidiaries of the

(Testimony of P. M. Downing.)

North American Company relating to the Applicant's business? A. No.

Q. Would you describe Applicant's operations as those of an integrated public utility system?

A. Yes, I would say they were an integrated system.

Q. The rate reductions which you testified to on your direct examination, Mr. Downing, were they voluntary or involuntary, or partial or both?

A. Some were voluntary; some were the result of negotiations with the Railroad Commission, and some were the result of public hearings held by the Commission.

Q. Compared with the rest of the United States is the rural territory served by the applicant not more densely populated than most agricultural areas?

A. No, I wouldn't say that it is more densely populated. I might say that we have, perhaps, a longer period of the year when we have no rains and the amount of power required for irrigation pumping is probably—per annum [137] is probably greater here than it is in many other places.

Q. Do you have the same rates throughout your territory for electricity and gas?

The Witness: I didn't get that.

The Examiner: Will you read it, please?

(The question referred to was read by the reporter as above recorded.)

(Testimony of P. M. Downing.)

A. No; they are lower in the congested areas than they are in the rural areas.

By Miss Calkin:

Q. What is your rate per mcf. for gas in the City of San Francisco for domestic use for consumers in the first block?

A. Well, now, I am not certain that I can give you that from memory. It is about 65 or 75 cents in the first block.

Q. And what is the rate per kwh. in San Francisco for domestic units for the first 20 kwh.?

A. I don't recall what it is. I am trusting now entirely to memory because we have a large number of rate schedules and I don't attempt to carry them in my head.

Q. That information is obtainable?

A. Oh, yes, indeed.

Q. The organization chart, which, I believe, is Applicant's Exhibit No. 9, that purports to show the [138] organization of your personnel as of the present time? A. Yes.

Q. How many employees approximately does the Applicant have?

A. Something over twelve thousand.

Q. Am I correct in my understanding that yourself, Mr. Wishon, Mr. Foote and Mr. Coghlan regularly attend meetings of the Executive Committee, although yourself and those gentlemen are not members of such committee?

(Testimony of P. M. Downing.)

A. That is correct, yes.

Q. How long has that been the practice?

A. Well, I have sat with the Executive Committee ever since I became vice-president and general manager in 1929. Mr. Foote has, so far as I know, always sat with the Executive Committee. Mr. Coghlan, I think, has sat with them since he became a member of the Board of Directors and likewise Mr. Wishon since he became a member of the Board.

Q. Now, those gentlemen and yourself are not called in by the Executive Committee to discuss a particular problem, but you simply go to Executive Committee meetings whenever the same are held, is that correct?

A. I attend all meetings of the Executive Committee.

Q. Without any special call by the president or any member thereof? A. Yes. [139]

Q. You gentlemen just go to every meeting?

A. Oh, yes, every meeting, yes.

Q. I wish you would explain in a little greater detail than you did on your direct examination the function of the Appropriations Committee. Does that committee have anything to do with your budget?

A. No; the budgets are made up by the various department heads. The Appropriations Committee takes the various requests for authorizations that

(Testimony of P. M. Downing.)

come in from the various divisions and from the various departments and review those to satisfy themselves that they are in order. If any question comes up in the minds of any people of the Appropriations Committee the request for authorization is held up until further information is available.

Q. Mr. Downing, does your company deliver power to other utility companies for use or distribution by them outside of the State of California?

A. There is one company that we sell power to that transmits, I understand, a portion of that power across state lines.

Q. And what company is that?

A. Sierra Pacific Power Company.

Q. Does the Applicant sell power to the California-Oregon Power Company or a company of a similar name?

A. No; we buy power from California-Oregon Power [140] Company.

Q. But you sell no power to them?

A. No.

Q. And the power which you purchase, is that generated in the State of California?

A. I don't know. That company has certain generating plants in California and it has certain generating plants in Oregon. We have no way of telling whether that power is generated in California or in Oregon.

Q. You purchase no power from Sierra Pacific Power Company? A. No.

(Testimony of P. M. Downing.)

Q. Do you purchase power from any other companies whose power lines or transmission lines cross state lines?

The Witness: I didn't get that question.

The Examiner: Will you read it, please?

(The question referred to was read by the reporter as above recorded.)

A. No, we do not.

By Miss Calkin:

Q. Do you have interchange power contracts with any companies?

A. Yes; we have an interchange power contract with the Yosemite National Park. They have a small plant there in the park and when there is an adequate water supply they [141] produce more power than they need for their own use we take the excess. When water is short in the Valley they do not have enough power to supply their own requirements and then they purchase from us.

Q. Is that the only interchange power contract to which the Applicant is a party?

A. Yes sir. I think, however, that in our agreement with the Southern California Edison Company there is an exchange provision, but as a practical matter, we have never delivered any power to the Edison Company; we buy from them.

The Examiner: We will have a short recess at this time if it is convenient.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

[142]

(Testimony of P. M. Downing.)

The Examiner: We will resume the hearing.

Mr. Downing, I understood you to say during the recess that you wanted to make a correction of your testimony.

The Witness: Yes. Perhaps an explanation might be in order. In Applicant's Exhibit No. 11 you will note that Pacific has sold to Southern California Edison Company during the five-year period, 1935 to 1939 both inclusive, a substantial amount of power. That represents sales in an area in the San Joaquin Valley where the Edison Company has for years purchased power from the Pacific Gas and Electric Company for supplying that area, rather than producing it at their own plants.

Under our present agreement with the Edison Company we purchase a substantial amount of power from that company. There is a provision in that agreement also which provides that we may deliver power to them. As a practical matter, the only power that we have sold to them under that agreement is in emergencies. There has been a small amount, I don't know just how much, delivered by Pacific to Edison, but that has been and is, so far as we are concerned, a purchase power contract.

By Miss Calkin:

Q. All of the gas sold by the Applicant is produced within the State of California?

A. Yes. [143]

(Testimony of P. M. Downing.)

Q. And the Applicant does not sell any gas outside of the State of California? A. No.

Q. The Midland Counties Public Service Corporation was a direct subsidiary of the Applicant prior to its dissolution, rather than a subsidiary of the Great Western Power Company of California, is that correct? A. Yes.

Q. Whereas the San Joaquin Light & Power Corporation was a subsidiary of Great Western Power Company of California?

A. No, no; I don't think so.

Q. That was a direct subsidiary of the Applicant also?

The Examiner: Do you understand the question?

By Miss Calkin:

Q. Who owned the stock of the San Joaquin Light & Power Corporation, the Applicant or the Great Western Power Company of California?

A. It was owned by the North American interests. The Western Power Corporation, if I am not mistaken——

Mr. Bosley: I think, if you will permit an interruption—off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [144]

By Miss Calkin:

Q. But the Napa Valley Electric Company, the Feather River Power Company and the California

(Testimony of P. M. Downing.)

Electric Generating Company were subsidiaries of the Great Western Power Company of California, were they not?

A. Yes, I understand they were.

Q. I notice in the original application that it also listed as a subsidiary of the Great Western Power Company of California the Great Western Power Company. What was the business of the Great Western Power Company?

A. I can't tell you.

Mr. Bosley: I think I might have to answer that for Mr. Downing.

The Great Western Power Company, a California corporation, was the predecessor of the Great Western Power Company of California. The Great Western Power Company, I believe, built the Big Bend plant. It developed much of the properties and for purposes of more advantageously commencing its operations the persons who owned the stock of the Great Western Power Company organized the Great Western Power Company of California and caused it to take over the properties formerly owned by the Great Western Power Company. That was about 1919. The Great Western Power Company of California was simply the successor through the transfer of properties of the Great Western Power Company. [145]

The Great Western Power Company, subsequent to the transfer of its properties to the Great Western Power Company of California, constructed an

(Testimony of P. M. Downing.)

electric transmission line out of certain moneys that were available to it under the provisions of an earlier mortgage, certain moneys that were on deposit with the trustee, so that after this date, which date, which I think was about June of 1919—I am not quite sure of the date—Great Western Power Company owned no property except a transmission line which was operated by Great Western Power Company of California in connection with the properties which the latter had acquired.

That transmission line was transferred to Pacific Gas and Electric Company when Great Western Power Company was dissolved in 1936.

By Miss Calkin:

Q. Does Applicant own any voting securities in any public utility company as defined in the Act other than its ownership of the securities of the Vallejo Electric Light & Power Company?

Mr. Phleger: Mr. Foote has prepared an exhibit on that, at the Commission's request, and it will be introduced through him.

The Examiner: Do you want any portion of Mr. Bosley's previous statement with respect to the acquisition of San [146] Joaquin, Midland and Great Western Power? I think the statement was to the effect, not on the record, that those were all acquired through a deal with the North American Company.

(Testimony of P. M. Downing.)

Miss Calkin: That is in evidence on the contract, but the reason for the question is that I think the statement in the original application is a little misleading. I interpreted it to mean that the San Joaquin Light & Power Corporation was a subsidiary of the Great Western Power Company of California. I now understand it was a subsidiary of the Applicant as of the date of the filing of the original application.

The Examiner: All three of those companies were direct subsidiaries, rather than any of them being indirect.

Miss Calkin: That is correct.

By Miss Calkin:

Q. I believe the amended application shows that the Applicant owns approximately 45 percent of the voting securities of the Vallejo Electric Light & Power Company? Do you know who owns the remaining voting securities of that company?

A. It is owned by the Casper family.

Q. When did the Applicant acquire its holdings in Vallejo?

A. I don't recall the date; a good many years ago.

Q. Were they purchased from the Casper family, or do you know how they were acquired? [147]

A. Some members of the Casper family had owned Vallejo stock and exchanged that stock for Pacific Electric stock.

Q. Do you know why the present interest of the Applicant in Vallejo was acquired?

(Testimony of P. M. Downing.)

A. It was purchased by the father of the present president of the Vallejo Company. K. Casper acquired that property many years ago, 40 years ago, perhaps.

Q. I mean, why did the Applicant, Pacific Gas and Electric Company, acquire its present interest in Vallejo?

A. There was some controversy among the members of the Casper family and some of them wanted to exchange their Vallejo stock for Pacific stock, preferring to have Pacific stock rather than Vallejo.

Q. Do you know why the Applicant was interested in making that exchange and acquiring——

A. (interposing) No, I do not.

Q. You don't know under whose presidency that acquisition was made?

A. I think it was under Mr. Hockenbeamer's presidency.

Q. You had nothing to do with it personally?

A. No.

Q. What is the operating territory of the Vallejo Electric Light & Power Company?

A. The City of Vallejo. Perhaps there may be a [148] slight amount of suburban territory, but primarily the City of Vallejo.

Q. Approximately how many customers does that company have? A. I don't know.

Q. Can you give me the approximate population of the City of Vallejo?

(Testimony of P. M. Downing.)

A. My guess would be that Vallejo has a population of 35,000 or 40,000.

Q. Is that the only electric utility company operating in that vicinity, in that city?

A. No. We handle some power for the Mare Island Navy Yard which, I understand, is within the corporate limits of the city.

Q. Is all of the power distributed by the Vallejo Electric Light & Power Company purchased from the Applicant? A. Yes.

Q. It has no generating facilities? A. No.

Q. What generally does the physical assets of the Vallejo Electric Light & Power Company consist of? A. Physical assets?

Q. Yes—property and plant.

A. The distribution system, electric distribution system, in the City of Vallejo. [149]

Q. What representation does the Applicant have on Vallejo's Board?

A. We have two members on the Board.

Q. How many members are on the Board?

A. Five.

Q. Two out of five? A. Yes.

Q. Has that representation been the same since the Applicant's interest was substantially what it is now? A. Yes, I think that it has.

Q. In other words, you have never, the Applicant has never had more than two members on Vallejo's Board of Directors?

(Testimony of P. M. Downing.)

A. Never more than two; no.

Q. Do you know what interests the other members of Vallejo's Board represent?

A. No, I do not.

Q. Do you know who is in charge of the operations of the Vallejo Company?

A. Yes. Dr. Casper is president and the operating head.

Q. He devotes all of his time to the business of the company?

A. I understand that he does; yes.

Q. Does the Applicant render any services, supervisory or otherwise, to the Vallejo Company? [150]

A. No supervisory service although, at the request of the Vallejo Company, we did do the engineering and the construction work on a sub-station which was recently built for the Vallejo Company.

Q. Was that done at cost to the Applicant?

A. Practically cost, yes.

Q. Are there any contractual arrangements, other than the one relating to the sale of power by Applicant to Vallejo, between those two companies?

A. No management contracts whatever, no?

Q. Are there any other contracts?

A. We may have a contract covering the purchase and sale of power. I don't recall just how that stands now, whether there is a contract there or whether they are buying on our regular schedule.

(Testimony of P. M. Downing.)

Q. Does your Division Manager, who is in charge of the territory in which Vallejo is located, have any contacts with the management of Vallejo?

A. No, except indirectly. Pacific Gas distributes gas in Vallejo, but the Vallejo Company distributes electricity which that company purchases from us. But we have an office in Vallejo and we own and operate the gas distribution system in that town.

Q. Do your representatives exchange operating ideas and information with the management of Vallejo? [151] A. No, no.

Q. Could you give me a detailed description of the nature and extent of the contracts between Applicant's personnel and the representatives of the Vallejo Company?

A. I would say we have no direct contacts, except perhaps some local contact there, we being in the distribution of gas and they being in the distribution of electricity.

Q. Who—I believe you testified to this on your direct examination but I have forgotten—who represents the Applicant on Vallejo's Board?

A. Mr. Coghlan and Mr. Straub.

Q. What position does Mr. Straub occupy with the Applicant? A. General Attorney.

Mr. Phleger: Mr. Coghlan is going to testify later on.

By Miss Calkin:

Q. Is Mr. Straub an attorney in the City of San Francisco?

(Testimony of P. M. Downing.)

A. Yes. He is regularly employed by the Pacific Gas and Electric Company.

Q. The Applicant has had only four presidents during its corporate history? A. Yes.

Q. Would you say that Mr. Drum, as president, represented primarily his own interests in the Applicant at the [152] time he became its president?

A. Yes, except that I think he represented other California interests as well as his own.

Q. What interests, if any, did Mr. Creed represent?

A. Mr. Creed was a California man. I don't know just how much interest he may personally have had in the company.

Q. Do you know who recommended or sponsored his election?

A. No. I understand, however, that Mr. Drum was the man who——

Q. (interposing) Did Mr. Drum retire?

A. Mr. Drum retired on account of ill health; yes.

Q. Is it your understanding that he named Mr. Creed as his successor, or recommended him to the Board?

A. I understand so, although I wasn't on the Board then and can't speak from first hand knowledge.

Q. What do you know about who recommended or sponsored Mr. Hockenbeamer for the presidency of the company on the death of Mr. Creed?

(Testimony of P. M. Downing.)

A. I don't know about that.

Q. Mr. Creed died in office? A. Yes.

Q. And no one ever told you who was primarily responsible for the election of Mr. Hockenbeamer as president? [153]

A. No. I don't know that I ever heard of it.

Q. I believe you testified that Mr. Hockenbeamer was associated with N. W. Halsey & Co. prior to his becoming an employee of the Applicant in 1907?

A. Yes, prior to his coming to California.

Q. N. W. Halsey & Co. was engaged in what business? A. Investment bankers.

Q. Could that company properly be described as the first banker for the Applicant?

A. They did considerable financing for the company during the early days. I don't know whether they were the first or not.

Q. Did you become acquainted with Mr. Hockenbeamer shortly after he became an employee of the Applicant? A. Yes.

Q. And Mr. Hockenbeamer was Controller and Vice-President?

A. I think his first title was Vice-President and Controller.

Q. And he remained in that position from 1907 until his election as president of the Applicant in 1927?

A. Yes. He had those responsibilities. I don't know that his title was changed, but he was Vice-

(Testimony of P. M. Downing.)

President right up until the time he was elected President.

Q. Who were the other dominant persons in Applicant's [154] organization during the period of Mr. Drum's presidency?

A. Well, I would have to look over the list to see just who were on the Board at that time.

Mr. Britton was Vice-President and General Manager and was an important factor in company affairs.

Q. When did Mr. Britton cease to occupy that position?

A. At the time of his death in about 1923.

Q. And you succeeded to his position?

A. No.

Q. You did in 1927?

A. Mr. F. A. Leach was Vice-President and General Manager from the date of Mr. Britton's death up until I took over that position in 1929.

Q. Did Mr. Leach continue after that time with the company? A. No, Mr. Leach retired.

Q. Who were the dominant figures in Applicant's organization during Mr. Hockenbeamer's presidency?

A. Mr. Hockenbeamer was President. Mr. C. O. G. Miller was on the Board, Mr. Allen Chickering, Mr. Livermore, Mr. John D. McKee——

Q. (interposing) You are now listing the Directors, but what individuals were most active in determining the policies and most dominant in the

(Testimony of P. M. Downing.)

affairs of the Applicant during Mr. Hockenbeamer's presidency? [155]

A. Mr. Hockenbeamer himself had more to say in connection with the formulation of the company's policies than anyone else.

Q. Could you describe Mr. Hockenbeamer's personality, his outstanding characteristics in the particular phase of utility work for which he was most adapted?

A. Mr. Hockenbeamer was essentially a finance man. He had devoted a great deal of his time to financial matters and not so much to the physical or operating end of the company's affairs.

Q. I believe you testified that you did not participate in the negotiations culminating in the Applicant's acquisition of the subsidiaries of the Western Power Corporation?

A. No, I did not sit in with Mr. Hockenbeamer when those negotiations were being carried on.

Q. But Mr. Hockenbeamer did consult with you concerning the advisability of the transaction?

A. Yes; on many occasions he discussed with me what was being discussed with the representatives of the North American Company.

Q. With whom, if you know, did Mr. Hockenbeamer carry on the negotiations?

A. Primarily with Mr. Black.

Q. Were any other representatives of the North American Company in California connected with those negotiations [156] that you know of?

(Testimony of P. M. Downing.)

A. None that I know of.

Q. Do you know who first proposed the Applicant's acquisition of these subsidiaries?

A. No, I don't know who made the original suggestion. The matter of consolidating the companies had been discussed at various times over a period of years, but I don't know who did make the final suggestion which led up to the consolidation.

Q. Which company, in your opinion, that is, the Applicant or Western Power Corporation, was most anxious to consummate the deal?

A. Well, I think they were both rather anxious to consummate the deal.

Q. Did you consider the transaction advantageous to the North American Company as well as to the Applicant?

A. Yes. I think it was advantageous to everyone.

Q. Did Mr. Hockenbeamer keep the Board informed as to the various terms of the negotiations and obtain their advice thereon, or were the negotiations pretty largely left up to Mr. Hockenbeamer's discretion?

A. No. Mr. Hockenbeamer discussed the progress of his negotiations on many occasions, both with the Board and with the Executive Committee; although he handled personally the details of those negotiations? [157]

Q. Mr. Hockenbeamer, so far as you know, was the only representative of the Applicant which car-

(Testimony of P. M. Downing.)

ried on the negotiations directly with the North American people?

A. Yes, I think that he was.

Q. Were you a member of the Applicant's Board when the Standard Gas & Electric Company acquired a large block of its common stock?

A. No.

Q. Did you ever hear Mr. Hockenbeamer, or anyone else, say that the Standard Gas & Electric Company was required to give a written assurance as to its participation in the Applicant's affairs and the disposal of its stock?

A. No. I don't know anything about that.

Q. You know nothing about the arrangement made at the time Standard Gas & Electric Company acquired a large block of Applicant's stock respecting the future participation of the Standard Gas & Electric Company in the affairs of the Applicant?

A. No, I don't know anything about that.

Q. Did you ever hear any discussion by anyone concerning whether North American would be required to give the same assurances to the Applicant as Standard Gas & Electric Company was required to give?

A. No. I don't know just what assurance, if any, North American might have given, although I have testified [158] it was definitely understood by the representatives of Pacific Gas and Electric Company that there would be no authority exercised by North American over Pacific's management.

(Testimony of P. M. Downing.)

Q. But you know nothing about North American's refusal, at the time it acquired a large block of Applicant's stock, to give a written assurance that it would not participate in the Applicant's affairs?

A. No, I don't know anything about that.

Mr. Phleger: That question assumes a matter not in evidence. I move that it be stricken.

The Examiner: Read the question, please.

Miss Calkin: I will be able to connect it up later. You can strike it at this time if you want to.

The Examiner: Subject to the possibility of it being connected up, I will reserve my ruling on the motion.

By Miss Calkin:

Q. You realized, did you not, that upon the consummation of the transaction proposed in 1930 that North American would be by far the largest single stockholder of the Applicant?

A. Yes, I knew that.

Q. Were you and other Board members not apprehensive concerning the possible attempt by North American to dominate the affairs of the Applicant?

A. Well, we were given to understand that there would [159] be no interference by North American.

Q. But your understanding in that respect was only what Mr. Hockenbeamer told you that the North American representatives had told him?

A. Yes.

(Testimony of P. M. Downing.)

Q. So far as you know, no member of North American's Board, or no representative of that company, appeared before either your Board or your Executive Committee and gave you any formal assurance as to the future participation or non-participation of North American in Pacific affairs?

A. No, I don't think anyone ever appeared before the Executive Committee or the Board.

Q. And the contract between the Western Power or the North American Company and the Applicant, which has been introduced in evidence as Applicant's Exhibit No. 6, so far as you know constitutes the only written agreement entered into between the parties in connection with the acquisition of the securities of the Western Power Corporation's subsidiaries? A. That is correct.

Q. You knew at that time, did you not, Mr. Downing, that North American was one of the largest holding companies controlling several large operating utility companies, did you not?

A. Yes, I knew that.

Q. But you, as a Board member of the Applicant, still [160] thought that it was unnecessary to provide any written safeguards against future domination of the Applicant by the North American Company?

A. I thought the word of the North American officers was sufficient.

Q. And you say the possibility of future domination by North American was a subject of much dis-

(Testimony of P. M. Downing.)

cussion before your Board of Directors and before the Executive Committee? A. Yes.

Q. And Mr. Hockenbeamer assured both the Board and the Executive Committee that the North American representatives would not attempt to influence the operations of the company?

A. Yes.

Q. Did you ever talk to Mr. Black concerning North American's participation in the affairs of the Applicant prior to the consummation of this deal?

A. No.

Q. What do you know about the understanding, if any there was, between North American and the Applicant prior to the time the transaction that we have been talking about was consummated, to the effect that North American would be entitled to a certain number of directors on the Applicant's Board?

A. I think that was probably mentioned at some of the discussions had by the Board of Directors during the progress of these negotiations. [161]

Q. Well, what was the understanding as to how many directors of the Applicant should be selected by North American?

A. You mean as to the number?

Q. Yes.

A. I don't recall. With the number of shares of stock which it was proposed to give to North American in exchange for the stock of these subsidiaries, they would be entitled to a certain number of direc-

(Testimony of P. M. Downing.)

tors and it was assumed by myself and others that they would have the number of representatives on the Board to which they were entitled.

Q. Do you mean that in your opinion the holding of a certain definite number of shares entitles a particular stockholder to elect a certain number of directors?

A. If he has the required number of votes and wants to exercise the right.

Q. What other stockholders of the Applicant have representation on the Board of Directors by virtue of their ownership of a particular number of shares of the Applicant's stock?

A. I don't know of any.

Q. The Standard Gas & Electric Company is your second largest stockholder, is it not?

A. They are the second largest stockholder, I think.

Q. Does it have any representation on your Board at [162] the present time?

A. No, I don't think it does.

Q. The Sun Life Assurance Company of Canada owns a substantial block of both the preferred and common stock of your company, does it not, Mr. Downing? A. Yes.

Q. Does that company have any representation on your Board? A. No.

Q. Who, if anyone, represents the Pacific Lighting Corporation on your Board of Directors?

A. Mr. C. O. G. Miller is an officer of the Pacific

(Testimony of P. M. Downing.)

Lighting Corporation. He is also a substantial stockholder in his own right.

Q. That company is the third largest holder of your common stock, is it not?

A. I think that it is, yes.

Q. Do you know whether or not the American Super Power Corporation has any representation on your Board of Directors?

A. No, it has not.

Q. What about the Travelers Insurance Company?

A. No; they have no representation.

Q. Who are presently North American's representatives on your Board of Directors?

A. Mr. Fogarty and Mr. Freeman. [163]

Q. Has North American ever had more than two representatives on your Board?

A. I don't recall whether they have or not.

Q. Has North American ever had any representation on your Executive Committee? A. No.

Mr. Bosley: Just a moment. I think——

The Witness (interposing): I will correct that. Mr. Guy Earl was on the Executive Committee.

By Miss Calkin:

Q. What was Mr. Earl's position prior to 1930?

A. I understand that he was president of the Great Western Power Company.

Q. Upon the consummation of this transaction did Mr. Earl become an employee of the Applicant as well as a member of its Board?

(Testimony of P. M. Downing.)

A. No, not an employee of the Applicant.

Q. In other words, Mr. Earl was never an officer or a full time employee of the Applicant?

A. No.

Q. But a member of its Executive Committee and a Director during his lifetime?

A. That is correct.

Q. Did Mr. Hockenbeamer acquaint the Board with any understanding or agreement that he entered into with representatives of the North American Company relative to its future [164] representation on Applicant's Board and Executive Committee?

The Witness: I didn't get the question.

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. It was discussed at the various Board meetings and it was understood that the North American Company would have representation on the Board if they elected to have such representation.

By Miss Calkin:

Q. Do you know what representation it was understood North American would be entitled to?

A. No, I don't recall any understanding.

The Examiner: Do you remember what, if anything, Mr. Hockenbeamer told the Board about discussions he had with representatives of the North American?

(Testimony of P. M. Downing.)

The Witness: No, I do not. I remember distinctly discussions having taken place as to the number of directors which the stock owned by the North American Company would entitle them to have if they elected to have representation on the Board.

By Miss Calkin:

Q. Do you recall the resignation of any members of your Board shortly after the consummation of the transaction to make way for the election of representatives of the North [165] American Company? A. No, I do not.

Q. Did you know Mr. Charles L. Barrett?

A. Yes.

Q. Do you know why he resigned?

A. No, I don't recall. He was an employee of the company.

Q. If he resigned on June 18, 1930 and Mr. Gruhl was elected on the same date, would it be your opinion that he resigned to make way for the election of Mr. Gruhl?

A. Yes, I think that would probably be a proper conclusion to draw.

Q. Did you know Mr. D-o-h-r-m-a-n-n?

A. Yes.

Q. Do you recall why he resigned?

A. No, I do not.

The Examiner: Are you going to proceed along some other line now, Miss Calkin?

Miss Calkin: I am going on with this for a few minutes more.

(Testimony of P. M. Downing.)

The Examiner: Will you come to a convenient place to stop in a few minutes, you think?

Miss Calkin: Yes.

By Miss Calkin:

Q. Do you know who, on behalf of the Applicant, entered [166] into the understanding, which there apparently was, between the Applicant and North American regarding representation on Applicant's Board by North American people?

A. No, I do not.

Q. That arrangement was not incorporated into the written agreement which was entered into between the parties, was it?

A. I don't recall, although I haven't read that agreement for years.

Mr. Bosley: The agreement is in evidence, isn't it?

Miss Calkin: That is correct.

The Examiner: It is Applicant's Exhibit No. 6, I believe.

By Miss Calkin:

Q. Does North American now have any representation on Applicant's Executive Committee?

A. No.

Q. Do you know whether it is entitled to such representation by virtue of the understanding had in 1930? A. No, I do not.

Q. And do you know why it has no representa-

(Testimony of P. M. Downing.)

tion on Applicant's Executive Committee at the present time? A. No, I do not.

Q. No one has ever discussed that matter with you? A. No.

Q. Has anyone representing North American ever told [167] you that its representation on Applicant's Board is not as important since Mr. Black has been president of the Applicant as it was during Mr. Hockenbeamer's lifetime?

A. No. I never heard anything of that kind.

Q. Do you consider Mr. Black as a representative of North American's interests on Applicant's Board? A. No, I do not.

Q. Have you ever so considered him since his election as president of the Applicant?

A. No, I have not.

Q. Mr. Black was a representative of North American on Applicant's Board for a period of time prior to the election as president of the Applicant, was he not? A. Yes.

Q. How frequently during that period, that is, prior to November 20, 1935, did Mr. Black attend meetings of the Board?

A. Well, I don't recall of his attending any meetings. He may have attended a few, but I don't recall any.

Mr. Bosley: I think Mr. Foote will give the company's record of the attendance, Miss Calkin.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Do you know why Mr. Palmer was elected as a Director of the Applicant?

A. I presume there was a vacancy on the Board and [168] Mr. Palmer was selected to fill that position.

Q. Do you know whether or not, prior to the selection of Mr. Palmer, North American was requested to relinquish its right to a third representative on Applicant's Board in order to permit Mr. Palmer's election? A. No, I do not.

Q. Mr. Black never discussed that matter with you? A. No.

Miss Calkin: I think this is a good stopping place.

The Examiner: We will recess until 2:00 o'clock.

(Whereupon at 12:10 o'clock p. m. a recess was taken to 2:00 o'clock p. m. of the same day.) [169]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: Are you ready to resume your cross examination?

Miss Calkin: Yes.

The Examiner: The hearing will be resumed.

(Testimony of P. M. Downing.)

Whereupon—

P. M. DOWNING

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination (Resumed)

By Miss Calkin:

Q. At whose suggestion was North American given a certain number of representatives on Applicant's Board, if you know, Mr. Downing?

A. I don't know.

Q. You don't know whether it was at Mr. Hockenbeamer's suggestion?

A. No, I don't know of any understanding had between North American and Pacific Gas regarding representation.

Q. Do you know whether or not their representation on the Board was a condition precedent to the consummation of the transaction and if representation to North American [170] had been refused the deal would not have been consummated?

A. I don't know.

Q. How and by whom is the Proxy Committee for the annual stockholders meeting of the Applicant selected? A. By the president.

Q. Does the president suggest the names of the Proxy Committee to the Board?

A. As far as I know.

(Testimony of P. M. Downing.)

Q. Well, does the Board select a Proxy Committee, or does the president select a Proxy Committee?

A. Well, I don't recall whether the Board selects them or not.

Q. Do you know who makes up the slate of directors to be voted for by that committee at the stockholders meeting?

A. No; it is generally the same directors; the directors generally succeed themselves.

Q. Do you know how the Applicant is advised as to who North American's representatives on the Board should be? A. No, I do not.

Q. Neither Mr. Fogarty or Mr. Freeman, or anyone connected with North American since 1930 has ever communicated with you and advised you who they wanted selected as their representatives?

A. No.

Q. Would you say that the members of the Board who [171] are also members of the Executive Committee are generally the most active directors of your company other than the directors who are also employees?

A. Well, I don't know that I would say they were more active, that they are more active than the other directors, but I would say the employee directors are just as active as the members, directors who are members of the Executive Committee.

Q. Do the members of the Executive Committee

(Testimony of P. M. Downing.)

receive a fee for attendance at the Executive Committee meetings?

A. Yes. A fee for Executive Committee meetings? Yes.

Q. Do the members of the Executive Committee who are also employees of the company receive a fee? A. Yes.

Q. What is that, the amount of that fee?

A. $20.

Q. And do the directors receive a fee for attendance at directors meetings? A. Yes.

Q. What is that fee? A. $20.

Q. And do the directors who are employees of the company receive a fee for attending directors meetings? A. Yes. [172]

Q. How would you compare the functions of the Board with those of the Executive Committee, Mr. Downing?

A. The functions of the two bodies are similar except that the Executive Committee goes further into detail in acting on matters than the Board does. In other words, there are a great many matters that come before the Executive Committee and are decided without being referred to the entire Board.

Q. Well, is the action of the Executive Committee meeting approved by the Board at its next meeting? A. No.

Q. The Board, as such, does not approve at each

(Testimony of P. M. Downing.)

of its meetings all previous action of the Executive Committee? A. No.

Q. Does Mr. Black ever advise the Board as to recommendations made by the North American Company when he submits matters to it?

A. No, I haven't heard of any report or recommendation by Mr. Black regarding the views or the ideas or the wishes of the North American Company.

Q. You mean during the entire period of Mr. Black's presidency you have never heard him mention at a Board meeting what North American's views were on any particular problem confronting the Applicant?

A. No, I don't know that I ever have; I don't think [173] I ever heard him mention.

Q. Has he ever made such recommendations or ever acquainted the Executive Committee with such recommendations?

A. No, I don't remember of any at all.

Q. Since you have been a director of the Applicant have you ever been advised from any source what North American's wishes were with respect to a particular matter? A. No.

Q. Do you know of any instance where the Board has inquired of Mr. Black whether he had conferred with North American representatives on a major problem and, if so, what suggestions, if any, were made by North American?

(Testimony of P. M. Downing.)

A. No, I don't remember of any instance where any questions have been asked of Mr. Black.

Q. Well, Mr. Downing, do you recall any instance where North American's viewpoint or attitude toward a particular problem confronting the Applicant's Board of Directors was discussed at a Board meeting?

A. No, with possibly one exception. Several years ago the dividend of Pacific Gas was temporarily reduced and some question was raised at that time, I understand, by the North American Company regarding that reduction.

Q. Was that in 1933?

A. It was about that time. I don't recall just what year that reduction was made. It was about that time, [174] though.

Q. Was it at the time the regular dividend of the Applicant on its common stock was reduced from, I believe, it was 8 per cent to——

A. (Interposing) 6.

Q. To 7 in 1933?

Mr. Gerdes: 6.

Mr. Phleger: It was reduced from a quarterly dividend of 50 cents to 37½ cents, or from $2 per annum to $1.50 per annum. It shows 7 per cent because it was reduced in the middle of the year and adding it up it amounted to 7.

Miss Calkin: I see.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Well, who conveyed to the Board at that time North American's views on the reduction of dividends?

A. I don't know. I was not present at the meeting when that reduction was made; I was away on vacation.

Q. Well, was North American advised prior to the time the dividends were reduced that the reduction would take place?

A. It is my understanding they were not so advised.

Q. Well, at a subsequent meeting of the Board, that is, a meeting of the Board after the dividend was reduced, was any representative of North American present? A. No; no, I think not. [175]

Q. Well, do you now recall from whom you learned that North American objected to the reduction of such dividends?

A. I think Mr. Hockenbeamer said there was some question raised.

Q. Is that the only instance that you can recall that you, as a director, have ever been advised as to North American's views on any problem which was before the Applicant's Board for consideration? A. That is the only instance, yes.

Q. I believe you said that you were acquainted with Mr. Freeman. A. Mr. Freeman, yes.

Q. You met him in New York?

(Testimony of P. M. Downing.)

A. In New York, yes.

Q. For the first time? A. Yes sir.

Q. And do you usually go to New York a couple of times a year, Mr. Downing?

A. Once or twice a year, yes.

Q. And what is the nature of your business in New York?

A. Generally on vacations or to attend conventions.

Q. Well, when you go to New York is it your custom to call upon the officers of the North American Company? A. Occasionally I do, yes.

[176]

Q. And on those occasions do you discuss with the representatives of the North American Company with whom you confer the problems confronting the Applicant at that particular time?

A. No; any discussions that take place are very casual. Those calls are merely social calls for a few minutes. I drop in and pass the time of day and then leave. They are not business calls and any discussion of business is very, very casual.

Q. Have you ever carried away from such conferences North American's views on problems of the Applicant and later submitted those, acquainted the Board with those views?

A. No, never, never.

Q. Have you, in your capacity as general manager of the company, ever put into force and effect any recommendations made by the representatives

(Testimony of P. M. Downing.)

of North American Company at the conferences you have had with them? A. None whatever.

Q. At those conferences have any representatives of North American Company ever voiced to you a disagreement with certain policies being carried out by the Applicant? A. No.

Q. Have they ever made any suggestions as to changes in the operating or financial policies of the Applicant?

A. No, never have. [177]

Q. Do you recall Mr. Hockenbeamer ever having advised the Board of suggestions which he received from North American? A. No.

Q. On any matters of the Applicant?

A. No, I have no recollection of anything of that kind being discussed.

Q. Was Mr. Black an active Board member from 1930 to 1935? A. No, he was not.

Q. How frequently would you say Mr. Black attended meetings of the Board during that period?

A. Very, very seldom. Right at the moment I don't recall any meetings he ever attended, although he may have attended a few.

Q. During that interval did you confer with Mr. Black when you were in New York?

A. I may have passed—I may have dropped in and paid my respects and passed the time of day, but the calls were not made for the purpose of discussing business and very little, if any, business discussions took place.

(Testimony of P. M. Downing.)

Q. Did Mr. Black make any recommendations prior to the time he became president of the Applicant regarding the problems, operating matters of the Applicant? A. No, not to me. [178]

Q. Mr. Earl was an active member of the Applicant's Board from 1930 until the date of his death, was he not? A. Yes.

Q. And it was well recognized that he was a representative of North American Company on your Board? A. Yes sir.

Q. Do you know to what extent Mr. Earl kept the North American Company advised as to matters presented at the Board meetings of the Applicant?

A. No. Mr. Earl used to take a great many notes at Board meetings and also at Executive meetings, but just what use he made of those notes I don't know.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he became president of the Applicant? A. No.

Q. Has the Board ever disapproved of matters submitted and recommended by Mr. Black since he has been president?

A. No, I don't know of a single instance.

Q. Was the relationship between the Board and Mr. Hockenbeamer at all times harmonious?

A. Yes.

Q. Do you, as a director of the Applicant, feel free to act on any major problem confronting the

(Testimony of P. M. Downing.)

Applicant without ascertaining what North American's reactions to the problem [179] might be?

A. Oh, yes, indeed.

Q. And you can now recall no instance in which you have ever been acquainted with North American's wishes in respect to a particular matter since Mr. Black has been president of the Applicant?

A. No, I recall none.

Q. What persons have you conferred with during the last five years that were employees or representatives of the North American Company?

A. I have seen Mr. Fogarty and Mr. Freeman. Mr. Doolittle, I think, has not been with the North American during the past five years. I don't recall just when he severed his connections with North American.

Q. Are you acquainted with Mr. Harrison Williams? A. No.

Q. You have never met Mr. Williams?

A. I don't know Mr. Williams.

Q. Do you know Mr. Sealey? A. Sealey?

Q. Yes. A. No.

Q. Do you know Mr. Preger? A. No.

Q. Do you know Mr. Hartel? [180]

A. No, I do not.

Q. Do you know Mr. Piske? A. No.

Q. Did you consider Mr. Earl to some degree, at least, a spokesman for North American, while he was a member of your Board?

(Testimony of P. M. Downing.)

A. Well, he was recognized as the North American's representative.

Q. And when he made recommendations to the Board they might well have been recommendations made at the suggestion of North American?

A. They may have been; I don't know.

Q. Who succeeded Mr. Earl as a director of the Applicant? A. I don't recall.

Q. Was Mr. Black considered as a successor to Mr. Earl in the capacity of spokesman for North American?

A. You mean after he became president?

Q. Yes. A. No.

Q. North American's representatives on the Board have been less active under Mr. Black's presidency than they were under Mr. Hockenbeamer, have they not?

A. Well, now, I wouldn't say that. Outside of Mr. Earl the representatives of North American Company have all [181] been very inactive because they have never attended meetings.

Q. Well, Mr. Earl died only a short time before Mr. Black became president, did he not?

A. Yes. I don't recall just when Mr. Earl died. I think, though, it was before Mr. Black became president.

Q. Do you know when Mr. Earl became a director of North American?

Mr. Phleger: You don't mean "North American".

Miss Calkin: I mean of the Applicant.

(Testimony of P. M. Downing.)

A. It was shortly after the consolidation, 1930.

By Miss Calkin:

Q. So Mr. Earl was a member of your Board from approximately the time of the acquisition by the Applicant of the securities of the subsidiaries of Western Power Corporation until the time of his death? A. Yes.

Q. And during that period he was a very active member of the Board, was he not?

A. I wouldn't say that he was any more active than any of the other directors.

Q. Well, he attended with a fair degree of regularity, did he not? A. Yes, he did.

Q. And since Mr. Earl's death there has been no representative of the North American Company who has attended [182] meetings of the Board with anything like the degree of regularity that Mr. Earl attended such meetings, has there?

A. No, there have not been.

Q. Mr. Downing, who did you first hear suggest Mr. Black as Mr. Hockenbeamer's successor?

A. The suggestions was made to me by Mr. C. O. G. Miller and Mr. Fred Elsey.

Q. You were not then a member of the Executive Committee of the Applicant?

A. No; I have never been a member of the Executive Committee.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. What did Mr. Miller and Mr. Elsey say to you in connection with Mr. Black's consideration for the presidency of the Applicant?

A. They told me that they thought Mr. Black was the logical man for the presidency.

Q. Do you know whether or not at that time they had conferred with Mr. Black and ascertained whether or not he would accept the position if it was offered to him?

A. No, I was not told whether they had conferred with him or not. [183]

Q. Did they tell you that they had talked to any other members of the Board prior to the time they had talked to you? A. Yes.

Q. And did they tell you what the reaction of the other members was to their suggestion?

A. Yes, they said that the other members of the Board were in favor of Mr. Black.

Q. Did the Executive Committee consider Mr. Black's selection prior to the time his selection was considered by the Board, if you know?

A. No, I think not, not in the meetings of the Executive Committee.

Q. Do you know who advised Mr. Black that he was being considered for this position?

A. No, I do not.

Q. Did the Board direct any particular member to carry on negotiations with Mr. Black concerning his coming to the Applicant as its president?

(Testimony of P. M. Downing.)

A. No, there was no formal action along that line.

Q. Do you know whether Mr. Black was selected as president prior to the time he left New York and came to San Francisco to accept the position?

A. Yes, he was selected before he left New York.

Q. So that the Board had no personal—no member of [184] the Board resident in San Francisco, to your knowledge, had any personal contacts with Mr. Black prior to the time he was selected as president?

A. So far as I know there were none.

Q. Who at that time, that is, in November of 1935, if you know, were North American's representatives on Applicant's Board?

A. Mr. Fogarty was one. I don't know who the others were at that time.

Q. Did you have any conversations with Mr. Fogarty concerning Mr. Black's selection as president of the Applicant? A. No.

Q. Have you testified as to everything you know concerning the selection of Mr. Black as the president of your company?

A. Well, there is only one thing that might have some bearing on it. At the time of Mr. Hockenbeamer's death I notified all the directors of the company and among others were Mr. Black and Mr. Fogarty, and during the conversation Mr. Fogarty stated to me that I need not have any concern be-

(Testimony of P. M. Downing.)

cause so far as he was concerned I would be his choice for president.

Q. Did you have any further conversations with Mr. Fogarty concerning that matter?

A. No, not until after Mr. Black's election. I [185] happened to mention it very casually one time.

Q. That was after Mr. Black came out here?

A. Yes sir.

Q. Did any director voice a dissent when Mr. Black's name was under consideration for the presidency of the company? A. No.

Q. He was the unanimous selection of the Board? A. Yes sir.

Q. Did Mr. Hockenbeamer die suddenly or was he ill for some period of time prior to his death?

A. No, he was ill only a comparatively short while. He had not been feeling well for some time, but he was at his desk up until a comparatively short time before he died.

Q. So that a possible successor to Mr. Hockenbeamer was not a matter that was under consideration for any great period of time?

A. Oh, no; I am sure nothing of that kind was under consideration. At any rate, I had never heard of it.

Q. Would you say that Mr. Hockenbeamer's death came as a surprise to the members of the Board? A. Yes, very much of a surprise.

(Testimony of P. M. Downing.)

Q. And, I believe, you testified you had no further conversations with Mr. Fogarty concerning your selection as president of the company? [186]

A. No, no.

Q. Was the possibility that Mr. Black, because of his association with North American, might be influenced and dominated by North American considered and discussed by the Board when it was considering his selection?

A. No, no mention was made of that.

Q. Did you personally believe that Mr. Black would not be influenced by North American or did you deem such influence not undesirable at the time you voted for Mr. Black as president of the company?

A. No, I had no thought that he would be influenced by North American.

Q. Before Mr. Black was offered the position of president of the Applicant did you have any assurance from him as to what his future attitude toward North American's suggestions might be?

A. No, none whatever.

Q. To your knowledge, did any member of the Board discuss with Mr. Black what the effect of his prior association would have upon his susceptibility to North American's recommendations?

A. I have no knowledge of any such discussion.

Q. So, as far as you know, the Board was not assured prior to Mr. Black's unanimous election as to what extent he might be guided by North Ameri-

(Testimony of P. M. Downing.)

can in determining future [187] policies of the Applicant? A. No.

Q. Were you then willing that North American take as active a part in Applicant's affairs as it might deem desirable?

A. No, because we were assured by Mr. Hockenbeamer that North American Company would not attempt to dominate the policy of Pacific Gas.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if it controlled Mr. Black, even though its representatives never attended Board meetings or had any other contacts with the other directors?

Mr. Gerdes: Will you read the question, please?

(The question referred to was read by the reporter.)

A. No, I hardly think so.

By Miss Calkin:

Q. Mr. Black is in active charge of the operations of the Applicant, is he not? A. Yes.

Q. Is every employee of the Applicant ultimately responsible to Mr. Black? A. Yes.

Q. Are there any employees on Applicant's payroll that Mr. Black does not have the authority to employ or [188] discharge?

A. No, none at all.

Q. Do you know of your own personal knowledge the extent of Mr. Black's contacts with North

(Testimony of P. M. Downing.)

American representatives since he has become president? A. No, no, I have no knowledge.

Q. It would be possible for Mr. Black to either seek North American advice or to receive instruction from its representatives on major problems without your knowledge, would it not?

A. Yes, it would.

Q. You would have no way of knowing whether or not, when Mr. Black recommended a matter to the Board for its approval, he had previously conferred with North American representatives and whether his recommendations had been influenced by what they said?

A. No, I would have no means of knowing.

Q. Mr. Black's association with North American people has been much closer than yours has been, has it not, Mr. Downing? A. Yes sir.

Q. Was the fact that the Board felt that North American should play a greater role in Applicant's activities one of the factors in the local directors selecting Mr. Black as Mr. Hockenbeamer's successor? [189]

The Witness: Would you mind reading that, please?

The Examiner: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

A. No, I think not.

(Testimony of P. M. Downing.)

By Miss Calkin:

Q. Well, what were the reasons for Mr. Black's selection?

A. The directors told me they thought that he was the logical man for the place.

Q. Did they give any further reasons?

A. No, I don't know that they did.

Q. Do you have any particular feeling about the desirability of North American's interference with Applicant's management or policies, Mr. Downing?

A. Yes, I would be very much opposed to North American attempting to take any active part in the management of the affairs of Pacific Company.

Q. And why do you feel that way?

A. The company has always been managed by Californians. All decisions as to policy and other matters have been decided right here in San Francisco, and it has been a tradition in the company that the management of Pacific Gas was centered right here in San Francisco.

Q. Do you feel it would be detrimental to the interests [190] of the Applicant if it were controlled by North American Company?

A. I do, yes.

Q. In what respects?

A. I don't like absentee management. I think the management should be centralized right here with men who know local conditions and who are in a much better position to pass on questions of

(Testimony of P. M. Downing.)

policy than could possibly be done by absentee management.

Q. Are you familiar with reports which the Applicant furnishes the North American Company?

A. No.

Q. Do you know whether or not North American is furnished with greater information concerning the Applicant's operations than are other stockholders? A. No, I do not.

Q. Do you know who has charge of furnishing North American with information concerning the Applicant?

A. No; I understand the secretary sends certain reports there, but no reports go out of my office or any of the departments under my general supervision to North American Company.

Q. Do you have anything to do with the formation of the budget? A. Yes. [191]

Q. Can you tell me briefly how that budget is prepared?

A. It starts in our various divisions and in our various departments. They prepare their estimates of expenditures that will have to be made generally for a year, and they are submitted and they are gone over by the management and some additions are made and some deletions are made.

Q. Well, whose department is primarily responsible for the preparation of the budget? Would that be your department or would it be Mr. Hodges' department?

(Testimony of P. M. Downing.)

A. No; it is a matter that comes under the vice-president and general manager. Each division manager makes up his budget and our various department heads make up their budgets. Then, they are all combined in my office and, as I have said, some of the items are deleted and there may be some additions.

Q. Well, then, do you submit a draft of the budget as it clears through your office to the president? A. Yes sir.

Q. Do you know whether or not a copy of the Applicant's proposed budget is submitted to North American for review before it is submitted to the Board for its approval?

A. It is not submitted to my office. I don't know—I don't think that it is, although I can't speak with certainty for Mr. Black's office. [192]

Q. Do you know whether or not North American has ever suggested changes in the proposed budget prior to the time it has been approved by your Board?

A. No; so far as I am concerned I don't know that they have ever seen the budget.

Q. You have been present at Board meetings when the budget was approved?

A. Yes, yes. They come up for general discussion although individual items are seldom discussed at Board meetings.

Q. At the time the budget has been submitted to the Board for approval has anyone ever advised

(Testimony of P. M. Downing.)

the Board that the budget included changes which had been made at the suggestion of North American?

A. No.

Q. Does Mr. Black have authority to expend money for all items included in the budget without further submission of the same to the Board after it has been approved by the Board?

A. No; those estimates originate in the office of the vice-president and general manager, and each week at the meetings of the Executive Committee a list of what we call G.M. Authorizations are submitted to the Board for approval. Those G.M Authorizations cover all expenditures in excess of $500. Expenditures of less than $500 do not have to be [193] approved by the Executive Committee, but all expenditures in excess of $500 go to the Executive Committee, are presented to the Executive Committee by the vice-president and general manager for approval.

Q. And are approved weekly by the Executive Committee? A. Yes.

Q. Does that apply to items which are included in the budget as well as emergency matters?

A. Yes; the budget is purely an estimate and is not an authority to make the expenditures.

Q. In other words, the Executive Committee of your company approves expenditures of all sums for any purpose in excess of $500?

A. Yes, except some maintenance jobs, emergency work, why, they may go ahead.

(Testimony of P. M. Downing.)

Q. The advisability of any major construction project will be considered by the Board and its authorization secured before work was commenced would it not?

A. Yes, by the Executive Committee.

Q. In a Board discussion relating to proposed construction projects has Mr. Black ever advised the Board of North American's views on a proposed job? A. No.

Q. Do you recall Mr. Black ever having recommended [194] any particular matter and at the same time advising the Board that North American had informed him that it was opposed to the same?

A. I have no recollection of a single instance of that kind.

Q. Does the Board either authorize or disapprove major construction proposals without being advised of North American's attitude regarding the same?

A. Oh, yes. I don't know that North American Company is ever mentioned during the consideration of these G.M. Authorizations.

Q. And a G.M. Authorization would include items up to any amount?

A. Any amount, yes.

Q. Is there any limit to the amount of expenditures which you think the Board would be justified in approving without knowledge of North American's viewpoint thereon?

(Testimony of P. M. Downing.)

A. Absolutely, yes, no limit at all to what they might expend.

Q. Has the Board, to your knowledge, ever directed Mr. Black to confer with North American representatives and get its reaction to a particular problem?

A. No, I don't remember of a single instance.

Q. Has the Board ever approved or directed a course of action which it knew was contrary to the wishes of North [195] American?

A. I don't know of any.

Mr. Phleger: Will you read the question and answer, please?

(The question and answer referred to were read by the reporter as above recorded.)

By Miss Calkin:

Q. Have you ever discussed any phase of the Hetch Hetchy situation with North American representatives, Mr. Downing?

A. Oh, it may have been mentioned in a casual sort of way, but not—I have never discussed it officially with them, any of them.

Q. In your discussions with Mr. Fogarty or Mr. Freeman or any representatives of North American regarding Hetch Hetchy, did they ever suggest to you how a particular matter should be handled in connection therewith? A. No.

Q. Has Mr. Fogarty ever expressed his views on the Hetch Hetchy situation to you?

(Testimony of P. M. Downing.)

A. No, I have no recollection of his ever having done so.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution [196] plant for the City of San Francisco?

A. No, I have no knowledge of anything of that kind.

Q. You are familiar with the activities of your company in connection with such municipal elections, are you not? A. Yes, yes.

Q. So far as you know have the activities of the Applicant been independent of any advice from North American?

A. Entirely independent of North Americn.

Q. Did you ever seek Mr. Fogarty's or Mr. Freeman's advice concerning what the Applicant should do in regard to the Hetch Hetchy matter?

A. No, I have not.

Q. Has Mr. Black ever conveyed to you what he stated were North American's viewpoints?

A. No, he has not.

Q. Who recommends the amount of common stock dividends to the Board prior to their declaration by the Board? A. The president.

Q. That was true during Mr. Hockenbeamer's presidency and has been true since Mr. Butler's and Mr. Black's presidency? A. Yes.

(Testimony of P. M. Downing.)

Q. Has Mr. Black ever told the Board at a meeting at which you were present what North American's ideas on the [197] subject of dividends on the common stock were?

A. No, I have never heard it discussed.

Q. Mr. Black, then, has never indicated to the Board that he was familiar with what North American's views as to the amount of stock dividends which the Applicant would be justified in paying were?

A. No, I have no recollection of it ever having been discussed.

Q. To your knowledge has Mr. Fogarty ever acquainted the Board with his ideas of a sound dividend policy for the Applicant? A. No.

Q. Have you, in your discussions with Mr. Fogarty and Mr. Freeman in New York, discussed the subject of dividends?

A. No, I don't think that I ever have.

Q. At whose suggestion were Applicant's dividends on its common stock reduced in 1933?

A. I was not present at the meeting when that reduction was made.

Q. Well, Mr. Hockenbeamer discussed the matter with you prior to the meeting and acquainted you with the fact that he intended to recommend a reduction in the dividend payments?

A. No; on the contrary he told me before I left on this vacation that he thought the regular dividend would be [198] declared.

(Testimony of P. M. Downing.)

Q. Well, did you ever learn who recommended a reduction in the dividend?

A. I heard that Mr. Frank B. Andersen was the one who was in favor of making the reduction.

Q. And the Board adopted his suggestion?

A. Adopted his suggestion.

Q. Was that over Mr. Hockenbeamer's protest?

A. I don't know to what extent he protested, but I do know that shortly before I went away, which was just before the meeting at which this dividend reduction was made, Mr. Hockenbeamer said that he thought the regular dividend would be declared. As a matter of fact, I think I had a letter from him while I was away to the effect that the regular dividend would be declared, but that was before the meeting at which action was taken to reduce the dividend.

Q. Do you recall Mr. Hockenbeamer ever having told you whether or not he had discussed the advisability of a dividend reduction with any representatives of the North American Company at that time?

A. No; he told me that he had not discussed it with them.

Q. And then after your return you learned that the dividend had been reduced?

A. Well, I first learned of it in Los Angeles. I was [199] in the East and I came back through the Canal. I stopped in Los Angeles during the day and I went up to the office of the Southern California Edison Company and they told me there that

(Testimony of P. M. Downing.)

the dividend had been reduced. That is the first knowledge I had of it.

Q. Then, when did you first learn that North American objected to the reduction in dividends?

A. Shortly after I returned home.

Q. And from whom did you learn that?

A. I think Mr. Hockenbeamer told me.

Q. And what did he tell you?

A. He said there was some question raised as to the propriety of making that reduction.

Q. Didn't he say with whom he had talked or communicated?

A. He talked with Mr. Dame; that is my recollection that he told me that he had talked with Mr. Dame over the telephone.

Q. Mr. Dame was then president of the North American Company? A. Yes sir.

Q. And it was your impression that Mr. Dame had objected to the reduction and thought that it was inadvisable?

A. That was my understanding, that he questioned the advisability of the reduction. [200]

Q. Well, did Mr. Hockenbeamer seem inclined to agree with Mr. Dame?

A. No; Mr. Hockenbeamer was willing to go along with the Board.

Q. Now, when were the dividends on your common stock first increased after the 1933 reduction?

A. I can't give you that from memory; I don't

(Testimony of P. M. Downing.)

know right at the moment.

Q. Well, do you recall the discussions which occurred prior to the increase?

A. There was some discussion — I don't remember now—I don't rely on my memory as to whether all dividends after the first increase following this reduction period were on the basis of $2 or whether some were on $2 and then they may have dropped back to $1.50 for a quarter or more, and then went to the $2 again. My mind isn't clear on that.

Q. Well, do you recall whether there was any increase in the dividends on the common stock during Mr. Hockenbeamer's presidency after 1933?

A. Yes, yes, I am sure the $2 dividend was restored prior to Mr. Hockenbeamer's death.

Q. Do you know whether or not that increase took place at the request and suggestion of the North American Company?

A. No, I don't think that it did; so far as I know [201] it did not.

Q. Did Mr. Hockenbeamer ever tell you that he had discussed the matter of the increase with representatives of the North American Company?

A. No, I have no recollection of any discussion having taken place after the discussions of the questions raised by North American regarding the reduction.

Q. What dividends are now being paid upon the common stock of the Applicant?

(Testimony of P. M. Downing.)

A. $2 per year; 50 cents a quarter.

Q. And you don't recall exactly how long that stock has been paid that dividend rate?

A. No, I don't recall.

Q. Do you know whether or not Mr. Black confers with North American representatives regarding proposed dividends before the same are declared? A. Not that I know of.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested would you request North American's opinion on the advisability of such action before final actions were taken by the Board?

A. No, no, I would not.

Q. Whose judgment would you rely upon?

A. The Board of Directors.

Q. What matters, if any, do you feel North American, [202] as Applicant's largest stockholder, should be consulted on before final action by the Board?

A. I don't think any matters at all.

Q. In your opinion, has North American's ownership of approximately 30 per cent of the common stock of the Applicant affected Applicant's operations and policies? A. Not at all.

Q. Can you think of no situation pertaining to the Applicant which would have been different if North American had owned no stock of the Applicant, and had received cash for the securities of the subsidiaries of Western Power Corporation?

(Testimony of P. M. Downing.)

A. I don't think it would have made a particle of difference.

Q. In your opinion, has North American ever participated in any manner in Applicant's affairs?

A. So far as I know, they have never participated in any of the company's affairs.

Q. In conncetion with the transaction by which the Applicant acquired the securities of Western Power Corporation System did you hear any discussion as to whether or not the regular bankers of the North American System would participate in future financing of the Applicant?

A. No, I never heard anything about that.

Q. Was anything said as to whether or not the houses [203] that had participated in past financings of Western Power Corporation System would have a claim on future financing by the subsidiaries that were taken over by the Applicant?

A. No, that never came up for discussion.

Q. National City Company had handled all of Applicant's financing from about 1917 to 1930, had it not?

A. I don't know whether it handled all or not; they handled considerable financing for the company.

Q. Do you know how National City Company originally got the financing of the Applicant?

A. No, I do not.

Q. You are not familiar with any of the contacts that members of the National City organiza-

(Testimony of P. M. Downing.)

tion might have had as early as 1917 with the Applicant? A. No.

Q. Were you, prior to 1930, acquainted with any members of National City's organization?

A. Some of the local representatives I was acquainted with.

Q. Was Mr. George Weeks a representative of the National City Company at one time?

A. He may have been. I knew Mr. Weeks very well, but I don't recall his connections now.

Q. Who did you know best that was a representative of the National City Company? [204]

A. I have just been trying to think of his name.

Q. Was it Stanley Russell?

A. I knew Stanley Russell. He made one or two trips out here in connection with some financing, and—somebody else here would know his name.

Mr. Phleger: Robert Cross?

The Witness: Cross, yes.

Mr. Phleger: And Conellen?

The Witness: And Conellen, yes.

By Miss Calkin:

Q. Were those representatives of the National City Company residents of the City of San Francisco? A. Yes.

Q. National City Company was not considered a California Banking house, was it?

A. So far as I know they were not; they had representation here.

(Testimony of P. M. Downing.)

Q. But it was generally thought of as a New York Bank? A. Yes sir.

Q. And you do not know how National City Company first got the financing of the Applicant?

A. No, I do not.

Q. To what extent did the Board participate in the selection of the syndicate manager of financing of the [205] Applicant prior to 1930?

A. Generally on the advice and recommendation of the president.

Q. So that the selection of the syndicate manager was left up to the president in the first instance?

A. Yes, he makes the recommendation and finally action is taken by the Board.

Q. Do you know of any instance in which the Board refused to follow the recommendation of the president as to who should manage the syndicate, the underwriting syndicate in connection with Applicant's financing?

A. No, I don't think that I do.

Q. Do you know who proposed the advisability of the issuance of $25,000,000 principal amount of bonds in July of 1930 and the issuance of $25,000,000 principal amount of bonds in January of 1931 to the Board?

A. No, I have no definite recollection on those particular points although matters of that kind, are generally recommended to the Board by the president.

Q. Do you know whether or not North American

(Testimony of P. M. Downing.)

was consulted as to the advisability of these two pieces of financing? A. No, I do not.

Mr. Bosley: When was the first one?

Miss Calkin: July 30th. [206]

By Miss Calkin:

Q. Do you know who headed the syndicates, underwriting syndicates which purchased these two issues? A. No, I do not.

Q. Did you have anything to do with any of the syndicate members obtaining participations in the underwriting syndicates which purchased these two issues? A. No.

Q. Do you know who determined the members of these two underwriting syndicates?

A. No.

Q. Do you know who carried on negotiations between the Applicant and the syndicate manager as to the price spread and other matters connected with these issues?

A. Matters of that kind are always carried on by the president.

Q. And during Mr. Hockenbeamer's presidency you would say, I mean, inasmuch as these issues came out during Mr. Hockenbeamer's presidency, would you say that all negotiations relative to these issues were carried on by Mr. Hockenbeamer?

A. Yes.

Q. With the underwriters? A. Yes.

Q. Are you acquainted with Charles Blyth?

(Testimony of P. M. Downing.)

A. Yes. [207]

Q. Did anyone from his organization ever express to you any dissatisfaction with his firm's second position in the two issues of the Applicant which came out in July of '30 and January of '31?

A. No.

Q. So far as you know, Blyth and Company were satisfied with their participation in the financing of the Applicant during the period that National City Company had the business?

A. So far as I know they were.

Q. Do you recall the $45,000,000 principal amount of bonds issued by your company in March of 1935?

A. Well, I have an indistinct recollection.

Q. Do you know who headed the underwriting syndicate which purchased that issue?

A. No, I don't recall.

Q. Do you recall that at that time National City Company was no longer in the underwriting business? A. No, I don't know.

Q. Do you know whether or not North American was consulted before the Board authorized the issuance of the $45,000,000 principal amount of bonds in March of 1935?

A. No, I don't know that they were.

Q. Do you know who initially suggested this refinancing? [208]

A. That was in '35?

(Testimony of P. M. Downing.)

Q. Yes, in March of '35, the $45,000,000 issue?

A. No, I don't.

Q. Did you ever talk to any representative of North American about any phase of this piece of financing? A. No, no conversation whatever.

Q. Do you know whether or not North American was advised prior to the time the Board authorized the issuance of these securities?

A. I don't know.

Q. Who determined the amount and kind of securities that would be issued in March of 1935?

A. The Board of Directors acting on the recommendation of the president?

Q. Well, was Mr. Hockenbeamer recognized as a person familiar with corporate financing?

A. Yes, very familiar.

Q. He was more what might be described as a financial man than an operating man?

A. Yes sir.

Q. Are you acquainted with the banking firm of Lazard & Freres & Company?

A. I have heard of them; I am not acquainted with them.

Q. You know, do you not, that that firm headed the underwriting syndicate which purchased several issues of bonds [209] by the Applicant?

A. I know that they handled some financing for the Applicant, yes.

Q. What person in that organization carried on

(Testimony of P. M. Downing.)

the negotiations between the Applicant and that banking firm, if you know?

A. The name has escaped me right at the moment. It was mentioned here just a moment ago.

Mr. Bosley: Stanley Russell.

The Witness: Stanley Russell.

By Miss Calkin:

Q. Did Mr. Russell solicit your aid in getting this piece of business for his firm?

A. No, he didn't solicit my aid.

Q. Did any other banking houses contact you in an effort to get the leadership of the syndicate which purchased the $45,000,000 issue in March of 1935? A. No.

Q. Did you talk to anyone other than the conversations had at Board meetings concerning the formation of the underwriting syndicate which purchased the March 1935 issue?

A. No, I had nothing to do with that.

Q. Who, in your opinion, selected Lazard & Freres & Company as manager of the underwriting syndicate that purchased the March 1935 issue?

[210]

A. The Board of Directors on the recommendation of Mr. Hockenbeamer.

Q. And you recall distinctly that Mr. Hockenbeamer did recommend Lazard & Freres?

A. Yes.

Q. As syndicate manager of that issue?

(Testimony of P. M. Downing.)

A. Yes, I am under the impression he did.

Q. Did any member of the Board in March 1935 object either formally or informally to Lazard & Freres & Company's selection when they first learned that that banking house was Mr. Hockenbeamer's choice?

A. I have no recollection of any objection.

Q. Do you recall any dissatisfaction over the manner in which the March 1935 issue was distributed to the public? A. No.

Q. Did Mr. Blyth ever talk to you during the early part of 1935 concerning the desire of his firm to head the underwriting syndicates which might puchase bonds issued by the applicant?

A. No, I have no recollection of any such conversation.

Q. You never promised to help Mr. Blyth, to assist Mr. Blyth in getting the leadership of Applicant's business? A. No.

Q. Are you acquainted with any other members of Mr. [211] Blyth's organization?

A. I may be. Right at the moment I don't recall any though.

Q. Do you know whether or not Mr. Hockenbeamer or any member of your Board sought Mr. Fogarty's or Mr. Black's advice as to what banking firm should head the March 1935 issue?

A. No, I don't know.

Q. Did Mr. Hockenbeamer ever tell you that either of these gentlemen made any suggestions to

(Testimony of P. M. Downing.)

him as to who should head the underwriting syndicate?

A. No, I never heard of any suggestions of that kind.

Q. Are you acquainted with the American Securities Company and Pierce-Fair & Company, or were you acquainted with them at that time?

A. Yes, I knew Pierce-Fair & Company. They have been out of business for a number of years, though.

Q. Did you know American Securities Company?

A. No, I don't know who that concern is.

Q. If testimony later introduced shows that those companies had received participations in financings of the Applicant prior to March 1935 and did not receive such participations in the March 1935 issue, do you have any knowledge as to why they did not receive a participation in the March 1935 issue? [212]

A. Are you speaking of Pierce-Fair & Company?

Q. Pierce-Fair and American Securities?

A. Well, I think Pierce-Fair Company were out of business at that time. They have been out of business for a good many years. I don't know the other concern.

Q. Were you then acquainted with the fact that Blyth & Company was endeavoring to get the leadership of Applicant's financing from Lazard &

(Testimony of P. M. Downing.)

Freres & Co., or to replace Lazard & Freres as leaders of underwriting syndicates formed in connection with Applicant's financing?

A. I heard they were after it. As a matter of fact, there were a large number of investment brokers who were endeavoring to participate in Pacific Gas and Electric Company financing.

Q. But none of them approached you directly?

A. No.

Q. And who acquainted you with the fact that several banking houses were endeavoring to participate in Applicant's financing?

A. Mr. Black;

Q. Did Mr. Black acquaint you with that as early as March or June of 1935?

A. No, not prior to that time; not until after he became president of the company.

Q. Well, did you know anything about the efforts of [213] Blyth & Company to get the leadership of this financing prior to Mr. Hockenbeamer's death?

A. Well, I think that they were anxious to get financing prior to Mr. Hockenbeamer's death. There were a good many different investment bankers who were endeavoring to participate in company financing.

The Examiner: Did you know prior to Mr. Hockenbeamer's death that they were anxious to get participation?

(Testimony of P. M. Downing.)

The Witness: No, I have no definite knowledge that such a request had been made.

By Miss Calkin:

Q. I think a later exhibit will show that the next piece of financing by the Applicant occurred in June of 1935 at which time it issued bonds in the principal amount of $40,000,000 and that in connection with that issue Blyth & Company headed the syndicate on the west coast and participated in the management fee.

Do you know anything about how Blyth & Company's position—or how it came about that Blyth & Company's position was improved over the issue in March of 1935? A. No.

Q. Did anyone at that time tell you that Blyth & Company's representatives in New York City were endeavoring to get Mr. Fogarty and Mr. Black to exert pressure on Mr. Hockenbeamer to permit Blyth & Company to head this issue? [214]

A. No, I haven't heard that.

Q. Did Mr. Hockenbeamer ever tell you in substance that he either gave Blyth & Company more consideration in the June 1935 issue than it had received in the March 1935 issue, or requested Lazard & Freres to improve Blyth & Company's position because North American representatives had suggested that Blyth & Company be given more consideration?

A. No, I never heard of that.

(Testimony of P. M. Downing.)

Q. Were you at this time aware that Mr. Black was probably more sympathetic with Blyth & Company's aspirations than with those of Lazard & Freres? A. No, I was not.

Q. Prior to the time Mr. Black became president did you ever discuss with him who should have the leadership of Applicant's financing?

A. No.

Q. And Mr. Hockenbeamer never acquainted you with any suggestions regarding the same, if any, which he received from North American representatives? A. No, none whatever.

Q. Now, I think the exhibit which will be later introduced will show that the next large piece of financing by the Applicant occurred in March of 1936, at which time the Applicant issued $90,000,000 principal amount of bonds.

Do you know whether or not Mr. Black conferred with [215] North American representatives prior to the submission to the Board of the proposal to issue $90,000,000 of bonds in March of 1936?

A. I don't know that he did.

Q. Did you talk to any representative of the North American Company about any phase of this piece of financing? A. No.

Q. Who handled that financing, that is, who formulated the plan of refinancing, and who recommended the same to the Board?

A. Mr. Black handled it. All matters having to do with finance are handled by the president.

(Testimony of P. M. Downing.)

Q. Do you know who headed the syndicate which purchased the $90,000,000 issue?

A. No, I couldn't tell you from memory.

Miss Calkin: I think it will be admitted that this syndicate was headed by Blyth & Company, will it not?

Mr. Gerdes: Yes.

By Miss Calkin:

Q. Did you ever suggest to Mr. Black that Blyth and Company be given the leadership of this issue, and that the leadership not be given to Lazard & Freres & Company?

A. No, I never made any such suggestion.

Q. Do you know who was responsible for Blyth & Company getting the leadership of the $90,000,000 issue [216] of March 1936? A. No.

Q. Do you recall any discussions had at meetings of the Board or of the Executive Committee concerning who should head this piece of business?

A. There was some discussion when the recommendation was made by the president that it go to Blyth & Company, and the recommendation was approved.

Q. So Mr. Black recommended to the Board that Blyth & Company head the syndicate which purchased the $90,000,000 issue of March 1936?

A. My recollection is that such a recommendation was made, yes.

Q. And were any members of the Board opposed to Blyth & Company's leadership?

(Testimony of P. M. Downing.)

A. I don't recall any opposition.

Q. Did Mr. Black give any reasons why he had selected Blyth & Company rather than Lazard & Freres & Co., as the manager of this syndicate?

A. No, I don't recall any reason that may have been given.

Q. I think that later documentary evidence will show that Lazard & Freres & Co., had a fifth position in the syndicate which purchased the $90,000,000 issue. Do you have any knowledge as to why Lazard & Freres & Company's [217] position was reduced from first to fifth?

A. No, I have not.

Q. Did any member of the Board other than Mr. Black evidence a desire that Blyth & Company head this business rather than Lazard & Freres & Company that you now recall?

A. No, I don't recall of any other member of the Board having any very definite ideas one way or the other.

Q. Were you, as a director, advised at the time Blyth & Company was selected to head this syndicate that their leadership would be more acceptable to the North American people than was the leadership of Lazard & Freres & Company?

A. No, no, I never heard of that.

Miss Calkin: Later documentary evidence, I believe, will show, I think counsel will admit, that Dillon Read & Company received a substantial par-

(Testimony of P. M. Downing.)

ticipation in the $90,000,000 issue; is that not correct?

Mr. Gerdes: Yes.

The Examiner: Just a minute, Miss Calkin. Does this refer to the same $90,000,000 issue in March?

Miss Calkin: That is right.

The Examiner: If this is a new line of questioning with respect to Dillon Read may we have a short recess?

Miss Calkin: Yes.

(Whereupon a short recess was taken.) [218]

The Examiner: We will resume the hearing now.

Do you know where you stopped your examination, Miss Calkin? You were inquiring about the extent and position of Dillon Read, who was underwriting in March 1936.

By Miss Calkin:

Q. In March of 1936 did you know whether or not Dillon Read & Co. had previously participated in and, in many instances, headed the financing of subsidiaries of the North American Company?

A. No, I did not know that.

Q. You did not know, if such were a fact, that Dillon Read & Co. were considered as bankers for the North American system?

A. No, I did not know that.

Q. Do you know how Dillon Read & Co. got a substantial participation in the March 1936 issue of the Applicant? A. No, I do not.

(Testimony of P. M. Downing.)

Q. You have no knowledge whatsoever concerning the method by which, or at whose suggestion, Dillon Read & Co. became a member of the syndicate which purchased the $90,000,000 in bonds from the Applicant in March of 1936?

A. No. I have no knowledge of that.

Mr. Bosley: I think the witness will state he doesn't know the first thing about any of the underwriters included in that syndicate, other than Blyth & Co. who headed it. [219]

I think, if you will ask a comprehensive question, you will save a lot of time. I don't believe Mr. Downing knows who the members of the syndicate were other than Blyth & Co.

By Miss Calkin:

Q. Is that correct, Mr. Downing?

A. That is correct.

Q. Do you know who selected the members of the syndicate? A. No, I do not.

Q. Other than the management?

A. No, I do not.

Q. Do you know who carried on the negotiations between the Applicant and Blyth & Co. in reference to this issue? A. Mr. Black.

Q. During the time you have been associated with the Applicant has it always been customary for the President to handle the financing?

A. Yes.

Q. So far as you know did Mr. Drum handle it during his presidency?

(Testimony of P. M. Downing.)

A. Yes. He had the final decision, although Mr. Hockenbeamer worked with him.

Q. In his capacity as Controller? A. Yes.

Q. And during Mr. Creed's lifetime? [220]

A. Mr. Creed handled it.

Q. Is there anyone in Applicant's organization today whose position corresponds with that of Mr. Hockenbeamer's prior to the time he became president?

A. No; no one with the title of Vice-President and Controller. We have a Controller now but he doesn't have the title of Vice-President.

Q. Well, during Mr. Hockenbeamer's presidency did he work closely with anyone in the organization on financing of the Applicant as did Mr. Drum work with Mr. Hockenbeamer during Mr. Drum's presidency?

A. No, I would say not. Mr. Hockenbeamer, during his presidency, handled financial matters himself.

Q. And what has been the situation since Mr. Black has been president?

A. The situation has been very similar to that during Mr. Hockenbeamer's presidency.

Q. Do you know where the negotiations between the Applicant and Blyth & Co. were carried on? A. No, I do not.

Q. Do you consider Blyth & Co. a San Francisco or California banking house, as distinguished from a New York banking house?

(Testimony of P. M. Downing.)

A. Mr. Blyth's residence is here. We look upon him as a Californian. [221]

Miss Calkin: I believe the testimony wili later show that Dillon Read & Co. did not participate in the next issues of the Applicant, which were a $30,000,000 bond issue in May of 1936, and a $35,000,000 bond issue in October of 1936.

Does counsel admit that that is true?

Mr. Phleger: That is true.

By Miss Calkin:

Q. Do you know, Mr. Downing, why that firm did not participate in the May and October 1936 issues of the Applicant? A. No, I do not.

Miss Calkin: I believe the last piece of Applicant's financing was a $50,000,000 bond issue which was privately placed in February of 1936. Is that correct?

Mr. Bosley: $15,000,000.

Miss Calkin: Is that correct?

Mr. Phleger: That is correct.

By Miss Calkin:

Q. Mr. Downing, do you know the reason that the $15,000,000 bonds issued in February of 1936 were sold privately, rather than publicly?

A. No, I do not.

Q. Did the North American Company, to your knowledge, play any part in the determination as to how this money should be raised?

A. No, I don't know that it did. [222]

(Testimony of P. M. Downing.)

Q. Do you know to what extent Mr. Black has conferred with representatives of the North American Company in connection with financing of the Applicant since he has been president?

A. No; I don't know that he has conferred at all. I don't know.

Q. Mr. Black has never expressed to you North American's views on any financial policies of the Applicant? A. No, he has not.

Q. Did Mr. Hockenbeamer ever do so?

A. No, I don't know that he ever did.

Q. Do you know whether or not during Mr. Hockenbeamer's presidency, and subsequent to 1930, he conferred frequently or infrequently with Mr. Black concerning the advisability of refunding and refinancing by the Applicant?

A. I don't know to what extent, if at all, he conferred with Mr. Black or anyone else connected with the North American Company.

Q. As a matter of fact, isn't it true, Mr. Downing, that in your work as Vice-President and General Manager of the company you had very little to do with the financial end of the company?

A. That is correct; yes.

Q. Your time is almost entirely occupied by the operations of the company? [223]

A. That is correct; yes. The President has always handled financial matters for the company.

Q. Then you would say that the President has

(Testimony of P. M. Downing.)

always, in the first instance, determined the financial policies of the Applicant?

A. Yes; subject, of course, to the approval of the Board of Directors.

Q. Does the President usually submit matters to the Board with his recommendations, not only financial matters but other matters? A. Yes.

Q. What is the usual procedure at the Board meetings? Who calls the meeting to order and who presents the matters, and that sort of thing?

A. The President presides at all meetings of the Board and at all meetings of the Executive Committee. The order of business is something like this: First will be the reading of the minutes. Then the Vice-President and General Manager is called upon for his report, and such recommendations as he may have to make. After he has made his report other operating heads, who sit in with the Executive Committee or with the Board, are called upon for reports. Then the President makes his report, which is generally financial in character, and also has to do with major policies of the company. [224]

Q. The Applicant does not have an officer known as Chairman of the Board?

A. No, we have not.

Q. You mentioned other operating men being called in at Board meetings. Is that frequently done, or are there certain officers or employees of the company who regularly attend Board meetings,

(Testimony of P. M. Downing.)

such as those mentioned in attendance at the meetings of the Executive Committee?

A. They regularly attend because all of the operating employees who sit with the Executive Committee are members of the Board of Directors.

Q. Can you relate, recall, any instance in which the Board refused to follow the recommendations of Mr. Black on financial matters?

A. No, I cannot. The recommendations generally have been approved.

Q. Do you recall any instance in which the Board has refused to follow the President's recommendations on any matters submitted to it by the President?

A. I think that one instance, that is, when the dividend was cut. I am satisfied that Mr. Hockenbeamer recommended that the regular dividend be declared and that recommendation was not approved.

Q. I think my question was directed to recommendations [225] made by Mr. Black. Do you recall any instance in which the Board has refused to follow recommendations made by Mr. Black since he has been President?

A. No, I don't recall of any.

Q. In other words, there has always been complete harmony between the Board and Mr. Black?

A. Yes.

Q. Are matters frequently submitted to the

(Testimony of P. M. Downing.)

Board for discussion without recommendation on the part of Mr. Black?

A. Oh, yes. Matters come up for discussion where it is not necessary that any action be taken. They are just up for discussion in order that the Board may be familiar with what is going on.

Miss Calkin: I think that is all.

The Examiner: Any redirect examination, Mr. Pheleger?

Mr. Phleger: Yes. I have a few questions.

Redirect Examination

By Mr. Phleger:

Q. Mr. Downing, you were asked whether Mr. Black did not employ or discharge all officers and employees, and I understood your answer was "yes". It is a fact, is it not, that all of the principal officers of the company are elected by the Board of Directors and subject only to removal by it; is that not so?

A. That is probably so. But the President's recom- [226] mendation regarding any employee would generally be acted upon by the Board. That was what I had in mind when I said that he did have complete control over all employees.

Q. Well, the Vice-Presidents, for instance, and other important officers, are elected by the Board, are they not? A. Yes.

Q. And they are removed by the Board?

(Testimony of P. M. Downing.)

A. Yes.

Q. And the President, in order to remove any of those officers, would have to recommend to the Board their removal?

A. Yes, that is probably correct.

Q. Now, with respect to the manner in which the company operates it is a fact, is it not, that Mr. Black usually confers with the various committees of the company in the process of formulating company policies; is that not so?

A. Yes.

Q. That is to say, any matter of budget recommendation is taken up by the President with, let us say, the appropriations committee before any recommendation is made to the Board, is that not so? A. Yes.

Q. And isn't it a fact that all major decisions of the company on questions of policy go through rather a lengthy routine before they eventuate in a recommendation by the [227] President to the Board? A. That is correct.

Q. So that when the President makes a recommendation to the Board that recommendation usually represents the composite views of the major executives of the company reached after rather lengthy discussions? A. That is correct; yes.

Q. And is it not a fact that Mr. Black, on all major questions affecting the company, discusses those questions at length with the Executive Com-

(Testimony of P. M. Downing.)

mittee before he makes any final recommendation on them? A. Yes.

Q. Let us take the Hetch Hetchy matters, for instance. Are they not the subject of almost continuous discussion, both with the committee of officers and the Executive Committee of the company?

A. Yes. That has been a topic of discussion for a long time.

Q. Is it not a fact that the company's policy with respect to that matter, and all other important matters, are formulated through a process of discussions beween the major executives and the Executive Committee? A. That is correct; yes.

Q. The President just doesn't walk in and tell the Executive Committee, or the Board of Directors, that he recom- [228] mends something and the Board and the Executive Committee simply approve them—that isn't the practice, is it?

A. Oh, no.

Q. Let us, for instance, take the matter of your budget. You have testified that the budget originates down below the division managers and the department heads and comes up to your appropriations committee.

A. It comes to the management first. But the budget is not approved at the beginning of the year when it is made out. The budget is intended to give the management an idea of the probable expenditures to be made during a given period. Now,

(Testimony of P. M. Downing.)

that budget is not approved in its entirety, but when the individual items of work listed on that budget come up for approval they are then approved by, first, the division managers or the engineers, and then the appropriations committee, the general manager, and finally they go to the Executive Committee for approval.

Q. Those are what are known as "G. M.'s"?

A. Yes. G. M. authorizations.

Q. General Manager's authorizations?

A. Correct.

Q. After the Executive Committee has approved a G. M. authorization, and the work has been completed, does the matter then again come before the Executive Committee?

A. Yes. It comes before the Executive Committee in the form of a report from the Auditor showing the amount of [229] money approved by the the G. M. authorization and the actual expenditures chargeable against that particular G. M., and the Executive Committee takes action cancelling the overruns on those various G. M.'s and approving over-expenditures on them.

Q. So that they not only approve the items initially, but they check them finally and must either approve the overs and cancel the unders?

A. Correct. They do that each month when the Auditor presents his statement to the Executive Committee.

(Testimony of P. M. Downing.)

Q. Who fixes the salaries of the employees over $300 a month? A. The Executive Committee.

Q. All those matters are taken up and passed by the Executive Committee, are they? A. Yes.

Q. Now, you were asked in various forms, Mr. Downing, as to whether or not various actions taken by the Executive Committee and the Board of Directors were taken upon or after consultation with the North American Company. Your answers generally, where you did not categorically say they they were not, were that you did not remember. Would you have remembered had it been stated in the Board of Directors that those particular actions were being presented with the recommendation or with the lack of recommendation of the North American Company? [230]

A. If it had come before the Board in that form, yes; I am certain that I would remember it.

Q. So that if such matters had been presented and associated with the name of the North American Company, you would have recalled it?

A. Yes, I am sure I would.

Q. You have no recollection of any such matter having been presented? A. No.

Q. Now, in connection with the election of Mr. Black as President of the company you, of course, participated in that as a director did you not?

A. Yes.

Q. A question was asked on cross examination

(Testimony of P. M. Downing.)

whether or not, in connection with the presentation of Mr. Black's name, it was suggested that after his election he would be subject to the suggestion of the North American Company. Was any such statement made to you in connection with the consideration of Mr. Black's election?

The Witness: May I have that question read?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No. [231]

By Mr. Phleger:

Q. If it had been suggested at the time that Mr. Black's name was presented to the Board in connection with the presidency that after his election he would be subject to the suggestion of the North American Company, would you have voted for his election? A. No, I would not.

Q. In your opinion would the other directors have voted for him?

A. I don't think they would have.

Q. You were asked, Mr. Downing, with respect to the names of persons active in the affairs in the company during the administration of various presidents. You are acquainted of course, with Mr. Frank B. Andersen? A. Very well.

Q. And was he a director and a member of the Executive Committee for many years?

(Testimony of P. M. Downing.)

A. Many years; yes.

Q. What was Mr. Andersen's business or profession?

A. He was President of the Bank of California and later Chairman of the Board of the Bank of California.

Q. He was a director and a member of the Executive Committee, was he not, during Mr. Drum's administration, during Mr. Creed's administration and during Mr. Hockenbeamer's administration up until the time of his death, was he not? [232]

A. Yes. As far back as I can remember he was on the Board.

Q. Was he always very active? A. Yes.

Q. Did he take a considerable interest in the financial affairs of the company? A. Yes.

Q. Do you remember Mr. Fred T. Elsey?

A. Very well; yes.

Q. Was he a director and a member of the Executive Committee for many years? A. Yes.

Q. Was he active in the affairs of the company?

A. Very active; yes.

Q. Was he engaged in financial work?

A. Yes. He was President of the American Trust Company at the time of his death and had been President for a number of years.

Q. Was he active in the financial affairs of the company? A. Yes.

Q. As well as in its other affairs? A. Yes.

(Testimony of P. M. Downing.)

Q. During all of the time that you have been a director and, indeed, before that, when you have attended [233] Directors' meetings has there always been a full and free discussion of all matters brought before the Board for discussion?

A. Yes; always a free and full discussion of the matters that have come up.

Q. Is that true also of all matters brought before the Executive Committee? A. Yes.

Q. During all of that period has any individual, whether he be president or not, exercised a dominating influence over either the deliberations of the Board or of the Executive Committee?

A. No.

Q. By the way, some comment or suggestion was made in a question this morning regarding the election of Silas Palmer as a director of the company. How long have you known Silas Palmer?

A. Oh, 20 or 25 years.

Q. You knew him for many, many years before he ever became a director of the company, did you not? A. Yes, many years.

Q. Have you served on the Proxy Committee of the Board ever since you have been Vice-President and General Manager of the Company?

A. Yes.

Q. Do you know who the other Proxy members have been [234] during that entire period, that is, the officers who also served on that committee?

(Testimony of P. M. Downing.)

A. I think the President and the Secretary.

Q. The President, the Vice-President and General Manager, and the Secretary?

A. Yes; I think that is the Proxy Committee.

Q. Now, with respect to the period that Mr. Earl was a member of the Board of Directors and of the Executive Committee of the company, did he ever take any more active part in the deliberations of those two bodies than any other directors?

A. No.

Q. Did he ever at any time state that any view he expressed was the view of the North American Company?

A. I have no recollection of any statement of that kind ever having been made by him.

Q. If it had been made you would be apt to recollect it, would you not?

A. I think I would; yes.

Q. A question was asked by counsel that it would be possible—I think it was placed this way: Would it be possible for North American to exercise control of the policies of the Pacific Gas and Electric Company if it exercised control over Mr. Black? I don't recall what your answer was. But, in your opinion, if it were known or believed by the [235] Board that the North American was exercising a control over Mr. Black, do you think that Mr. Black would be able to control the action of the Board of Directors?

(Testimony of P. M. Downing.)

A. No, I don't think that he would.

Q. Have you ever, during the time that you have been with the company and have served as a member of the Board of Directors and sat with the Executive Committee, observed anything of any kind, character and description that conveyed to your mind the thought that the North American either exercised any control or any controlling influence over the Pacific Gas and Electric Company, or over any of its affairs? A. Nothing whatever.

Mr. Phleger: That is all.

The Examiner: Any questions on recross?

Miss Calkin: I have one further question that I neglected to ask.

Recross Examination

By Miss Calkin:

Q. Mr. Downing, to what extent did the Applicant take over the personnel of subsidiaries of Western Power Corporation in 1930 as the Applicant acquired those subsidiaries?

Mr. Gerdes: May I have that question read?

(The question referred to was read by the reporter as above recorded.)

A. We took over as many of those employees as we could [236] find places for. It is true that some of them had to take positions of less responsibility and less compensation than they had enjoyed with the absorbed subsidiaries, and there

(Testimony of P. M. Downing.)

were some people further down in the ranks whom we couldn't take care of.

By Miss Calkin:

Q. Referring to Applicant's Exhibit No. 9, Mr. Downing, will you point out—as I understand this chart, most of these blocks or circles refer to some particular individual. Could you tell me, without too much trouble, how many persons occupying these various positions were formerly associated with the subsidiaries of Western Power Corporation?

A. That would be very difficult for me to do from memory.

Q. Mr. Wishon is Assistant General Manager, is he not? A. Yes.

Q. He was one formerly connected with——

A. (interposing) He was formerly with the Great Western and the San Joaquin.

Q. Can you now recall any of your key men, so-called, who were formerly associated with the subsidiaries of Western Power Corporation?

A. Yes. Our publicity manager was formerly the head of the publicity department of the Great Western and San [237] Joaquin. He took a position superior to that of the publicity man who had been serving with the Pacific Gas and Electric Company.

The auditor of the Great Western came in and is now in our auditing department. He is not the

(Testimony of P. M. Downing.)

auditor, but he took a position under our general auditor.

In the purchasing department there are two, one or two men, who were in the purchasing department of the Great Western Company.

The present chief engineer of the company was formerly with the Great Western Power Company, and a number of men in the engineering department are men who were formerly with the Great Western.

Q. Does Applicant now have on its payroll any persons who were formerly employed by the North American Company, or any of its subsidiaries, other than Mr. Black, and the former employees of the Western Power Corporation's system companies? A. No, no.

Q. You know of no instance where an individual employed by the North American Company, or a subsidiary of North American, with the exceptions previously noted, has been transferred to or employed by the Applicant?

A. No, I don't know of a single instance.

Q. In other words, you don't know of anyone, say, that was formerly connected with the Union Electric Company [238] of Missouri that is now in the employ of the Applicant?

A. No, I do not know of a single instance.

Q. Are you acquainted with all the subsidiaries of the North American Company? A. No.

(Testimony of P. M. Downing.)

Q. Do you have anyone on your payroll that you know of that was formerly employed by the Potomac Electric Power Company? A. No.

Q. Do you have anyone, to your knowledge, employed by the Applicant who was formerly employed by the Cleveland Electric Illuminating Company?

A. No.

Q. What about the Wisconsin Electric Company?

A. No, I don't know of anyone from there.

Q. What about the Wisconsin-Michigan Power Company?

A. No, none from there; nor from the Detroit Edison.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Downing, you have testified that the company has approximately 12,000 employees. Would you say that almost all of them are what would be termed Californians and were Californians at the time they entered the employ of the company?

A. Well, I think it is probably safe to say the [239] majority of them are. It is a fact that if they weren't Californians when they were first employed by the company that they have become Californians by this time because something over two-thirds of all the employees of the company have

(Testimony of P. M. Downing.)

been in the organization, or subsidiary organizations, for five years or more.

Q. With respect to your Chief Engineer, for instance, Mr. Euler, whom you stated came from the Great Western, when he entered the employ of the Pacific Gas and Electric Company he did not enter in that position, did he?

A. No. He was general superintendent of the San Francisco & East Bay divisions and was made Chief Engineer on the death of the Vice-President in charge of engineering. That latter position was never filled, but the position of Chief Engineer was created and Mr. Euler was appointed to that position.

Q. He simply worked himself up to that important position after several years of service with the Pacific Gas and Electric Company? A. Yes.

Mr. Phleger: That is all.

The Examiner: Any further questions?

Miss Calkin: No further questions of Mr. Downing.

The Examiner: Unless someone desires to recall you, you may be excused at this time.

(Witness excused.) [240]

The Examiner: It is after 4:00 o'clock now. Do you desire to call another witness this afternoon or do you think you could make sufficient progress to make it worth while?

(Testimony of P. M. Downing.)

Mr. Phleger: It is a matter of your convenience. Are we going to meet here tomorrow?

The Examiner: In the morning, yes, until I can make some arrangements about quarters down there. I haven't been able to arrange it yet.

Suppose we go on for another fifteen or twenty minutes.

Mr. Phleger: All right. Suppose we go ahead for fifteen minutes.

Mr. Foote, will you take the stand, please?

Whereupon

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and, after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Will you give your name for the record?

A. My full name?

Q. Yes. A. David Hiram Foote.

Q. Where do you live? A. San Francisco.

Q. How long have you lived in San Francisco?

[241]

A. In the vicinity of San Francisco, at Atherton, San Mateo, and in the immediate vicinity of San Francisco for the last 40 years.

(Testimony of David Hiram Foote.)

Q. When did you first enter the employment of the Pacific Gas and Electric Company, or its predecessor companies?

A. February 1, 1903.

Q. When did you first come to California.

A. About 1900.

Q. Where had you resided previous to that?

A. About a year, or perhaps a year and a half, in Arizona and prior to that time in Philadelphia.

Q. What position had you occupied in Philadelphia?

A. I was Secretary and Treasurer of the Union Trust Company of Philadelphia.

Q. What position do you now hold with the Pacific Gas and Electric Company?

A. Vice-President, Secretary and Treasurer.

Q. When did you first enter the service of the Pacific Gas and Electric Company and its predecessor companies?

A. When the Pacific Gas and Electric Company was formed, started business January 1, 1906. It was formed in October 1905, incorporated.

Q. And at that time you had an official position with one of its constituent companies, did you not?

A. Yes. I was Assistant Secretary of the California [242] Gas & Electric Corporation.

Q. When did you enter the employ of that company?

A. The California Gas and Electric Corporation?

Q. Yes. A. February 1, 1903.

(Testimony of David Hiram Foote.)

Q. What positions have you held with the Pacific Gas and Electric Company?

A. Well, I was elected Assistant Secretary in March of 1906. Then Mr. Conlisk was Secretary at that time and he resigned in July 1907 and I was made Secretary in July 1907.

Afterwards, about 1910, I acquired the additional title of Assistant Treasurer. Then later on, I have forgotten the dates, I was made Vice-President. Then after that, when Mr. Hockenbeamer became President, I was made Treasurer. So I have the three titles now and have had them since Mr. Hockenbeamer's election to the presidency.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. Oh, about 1909, I think.

Q. You have been a director of the Pacific Gas and Electric Company for many years, have you not?

A. Yes. I was a director at that time for several years, and then I resigned from the Board to give a place for a prominent businessman in San Francisco. I think it was Wallace Alexander, or A. B. C. Dohrmann—I have forgotten [243] which—but anyway afterwards, after they passed on, I was re-elected as a director. That was about 26 years ago, I think it was, either in 1914, 1913, or somewheres in there.

Q. And you have been a director ever since?

A. Continuously since that time; yes.

(Testimony of David Hiram Foote.)

Q. Do you own any securities of the North American Company? A. No.

Q. Did you ever own any? A. None.

Q. Have you ever owned any securities in any subsidiary of the North American Company?

A. No.

Q. Do you devote any of your time and attention to any other affairs other than those of the company? A. No, I do not.

Q. Do you recall who the principal moving spirits were in the original incorporation of the Pacific Gas and Electric Company?

A. I think I do.

Q. Will you name them?

A. John Martin, Eugene J. de Sabla—I think he is still alive—R. N. Hotaling, Frank G. Drum and Edward Coleman. They were the principal figures.

Mr. Bosley: There were two Colemans? [244]

The Witness: Yes; Edward and John, I think. They were with one of the subsidiary companies.

By Mr. Phleger:

Q. Now, the Pacific Gas and Electric Company at its inception acquired the controlling interest in two principal corporations, did it not?

A. It did.

Q. And what were those two principal corporations?

A. California Gas & Electric Corporation and the San Francisco Gas & Electric Company.

(Testimony of David Hiram Foote.)

Q. What properties did the San Francisco Gas & Electric Company own and where was its business located?

A. I think entirely within the City and County of San Francisco.

Q. Did it consist of both electricity and gas business? A. Yes.

Q. Was Mr. C. O. G. Miller actively connected with the San Francisco Company?

A. He was a director.

Q. And a large owner, was he?

A. Yes, I think so.

Q. Had he been connected for many years with the San Francisco properties of that company?

A. I believe so; yes, sir. [245]

Q. The Pacific Gas and Electric Company issued its securities in payment or part payment for the securities and stock of these constituent companies, did it not?

A. For the stock of the San Francisco Gas & Electric Company, and also for the stock of the California Gas & Electric Corporation.

Q. It also issued, did it not, at that time—I am referring to the Pacific Gas and Electric Company—preferred and common stock? A. Yes.

Q. What became of the common stock that was then issued?

A. The common stock of the Pacific Gas & Electric Company was issued in consideration of options on the stock of the San Francisco Gas & Electric

(Testimony of David Hiram Foote.)

Company and California Gas & Electric Corporation, I think, and was issued to a Nevada corporation, the Pacific Gas and Electric Investment Company, I think it was.

Q. And what became of that stock?

A. After the fire of 1906 the company, of course, had considerable losses—I mean the Pacific Gas and Electric Company—and an assessment was called on all the stock of the Pacific Gas and Electric Company. The preferred stock of the Pacific Gas and Electric Company paid its assessment, the common stock did not and it all came back into the treasury [246] of the Pacific Gas and Electric Company.

Q. Do you remember what the amount of that assessment was? A. $10 a share, I think.

The Examiner: Both preferred and common?

The Witness: Yes.

By Mr. Phleger:

Q. So that as a result of that assessment all of the common stock which had originally been issued by the company was sold and bought in by the Pacific Gas and Electric Company?

A. I don't recollect the exact procedure, but I know it all came back into the treasury of the Pacific Gas and Electric Company.

Q. Because of non-payment of the assessment?

A. Yes; because of non-payment of the assessment.

(Testimony of David Hiram Foote.)

Q. Will you outline generally your present duties with the company?

A. Well, I have charge of all the stock and bond transfers, and the issuance of bonds and stock generally, the details in connection with it; the payment of dividends; and I have charge of the company's cash, and the handling of it, and the cashiers' departments are under my supervision, and the Accounting Bureau of the Treasury Department as well. That about—also the secretarial duties. I take care of the [247] minutes of the meetings of both the Board of Directors and the Executive Committee. Our by-laws provide I shall do that as Secretary.

I also have charge of all the records of the company. They have been under my supervision and charge ever since I have become Secretary.

Q. Do you have custody of all the securities of the company?

A. Yes, yes, yes; as Treasurer.

Q. Where are all these books and records kept?

A. At 245 Market Street.

Q. That is the head office of the company?

A. Yes, sir.

Q. Since you have been Secretary of the company have the books and records of the company ever been kept at any place other than San Francisco?

A. No; or no copies of them have either.

Q. Or no copies?

(Testimony of David Hiram Foote.)

A. No copies of any minutes have ever been out of my office until very recently.

Q. They have always been at the head office of the company and the head office of the company has always been in San Francisco?

A. That is right; exactly.

Q. Has the company ever maintained any office outside [248] the State of California?

A. They have not; no.

Q. Who are the transfer agents for the company's stock?

A. The transfer agency of the stock in San Francisco is at the office of the company. C. E. Holt is the transfer agent and he makes, his department—he has quite a large department—he makes all the transfers of the stock.

The American Trust Company is the registrar of the stock issues in San Francisco.

The Bankers Trust Company in New York City is the transfer agent in New York City.

The New York Trust Company is the New York registrar. That is all.

Q. Coming back to the American Trust Company in San Francisco, which is the registrar, when was it, or its predecessor company, first appointed registrar?

A. At the very inception of the company. It has been the only registrar. The Mercantile Trust Company was the original company.

(Testimony of David Hiram Foote.)

Q. That was the predecessor of the American Trust Company? A. Yes.

Q. Now, with respect to the Bankers Trust Company, the New York transfer agent of the company, when was it first [249] appointed transfer agent?

A. A long time ago. It is pretty hard to remember the exact year. I think there was another company, possibly the Equitable Trust Company, that was originally our transfer agent there. I had some differences with them. They issued stock in names that our counsel didn't approve of. They wouldn't do otherwise and, through my recommendation, we went over to the Bankers Trust Company, because they had been trustees under one of our mortgages and they were very accommodating and very nice people to deal with. That must have been about 1910, I guess, or somewhere along in there, or 1912 or 1914. I have forgotten the date.

Q. So that they have been transfer agents ever since that time? A. Yes, sir.

Q. Have you known any officers of the Bankers Trust Company personally?

A. Yes. I knew Harry Wilson very well. He is now retired. He was in their Trust Department and I had very close contact with the work that he did for us. I met him in New York and he and his wife were out here in San Francisco and I entertained them. They were very nice folks.

(Testimony of David Hiram Foote.)

Q. You have always had cordial relations with the Bankers Trust Company since 1910?

A. Absolutely; yes. [250]

Q. Now, with respect to the New York Trust Company, which is your New York registrar, when was it appointed registrar?

A. I think they were apponted registrar before the Bankers Trust Company was made transfer agent. They were the original registrar in New York to my recollection.

Q. They were appointed on or about 1910?

A. When we first started to transfer stock in New York—way back. We didn't transfer our stock in New York at the very start of the company. It was done afterwards.

Q. Do you know how it happened to be appointed?

A. No, I do not. I don't recollect.

Q. But it has acted as transfer agent for approximately 30 years? A. Yes.

Q. On what exchanges is the stock of the Pacific Gas and Electric Company listed for trading?

A. The common stock is listed on the New York Stock Exchange. All classes of stock, both common and preferred, are listed on the San Francisco Stock Exchange and also on the Los Angeles Stock Exchange.

Then there has been a sort of a partial listing on the Honolulu Exchange. That was done at the re-

(Testimony of David Hiram Foote.)

quest of one of our former directors, Mr. John McCandless. Has now passed on. [251]

The Examiner: As to both common and preferred?

The Witness: I think, my recollection is the common is not listed in Honolulu. I think it is just the preferred. I don't know whether you call it a full listing or not. We consented that they should deal in the stock, something of that sort. I think they listed it among their securities. It is a very small exchange, and very unimportant.

Mr. Phleger: It is now 4:30, Mr. Examiner, and I suggest an adjournment.

The Examiner: Before we recess, I notice one or two members of the public in attendance.

I will ask whether or not either of you (indicating) gentlemen desire to make any statement for the record in this matter.

The gentleman here at the counsel table, do you desire to make any statement for the record in this proceeding?

Mr. Petroy: Beg your pardon?

The Examiner: Do you desire to make any statement for the record in this proceeding?

Mr. Petroy: I would like to ask some questions, if you will permit me.

The Examiner: I don't know as questions would be appropriate at this time. What is your interest in this proceeding?

(Testimony of David Hiram Foote.)

Mr. Petroy: I am a gas and electric consumer here in [252] San Francisco. I am a citizen. I have been writing on the public utility question for fifty years, and public ownership. My apartment and my home, for thirty years, has been burglarized almost daily, and 30,000 sheets of manuscript material that was gathered for me by the electrical workers union, and other unions of the Pacific Gas and Electric Company that were on strike in 1913, has been stolen from my apartment.

The Examiner: Would you mind stating your name and address, please?

Mr. Petroy: Edward Petroy—P-e-t-r-o-y. My residence is 1263 Oak Street, San Francisco. I was born here. I am 73 years of age. I have been a citizen and a taxpayer of San Francisco for more than fifty years.

The Examiner: I shall be happy, at the appropriate time, for you to make a statement for the record.

You will be in attendance, I suppose, again at some other session?

Mr. Petroy: Yes. I would like, for example, to ask a few questions of Mr. Downing and of the present witness.

I would like, for instance, to ask the present witness why the salary of the President of the Pacific Gas and Electric Company was increased from $50,000 a year to $75,000 a year when Mr. Black became President of the company.

(Testimony of David Hiram Foote.)

The Examiner: It is quite possible, Mr. Petroy —I cannot anticipate what trend this examination may take—that [253] those matters may be developed by the questioning of counsel. So if you intend to be present at these proceedings it is quite possible your questions will be answered.

At the appropriate time we will be glad to have your statement.

Mr. Petroy: The question of salaries was touched on here and I thought it might be an appropriate time to ask about it.

I am almost deaf and I have to sit up quite close. I have an instrument to aid my hearing, but the button that was here (indicating) in 1930 was disconnected so I couldn't hear when I went down to Albuquerque on the gas and electric rate case. Then later a earpiece that goes in it here (indicating) was stolen from the apparatus. So that is why I am in this condition now.

The Examiner: That is unfortunate.

If you want to attend the rest of these hearings you will be quite welcome.

Mr. Petroy: Thank you.

The Examiner: We will now adjourn until tomorrow morning at 10:00 o'clock.

(Whereupon, at 4:30 p. m., an adjournment was taken to Thursday, November 14, 1940, at 10:00 a. m.) [254]

PROCEEDINGS

The Examiner: We will resume the hearing whenever you are ready, Mr. Phleger.

Whereupon——

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

By Mr. Phleger:

Q. Mr. Foote, in what principal banks does the company maintain its deposits; first, the banks in San Francisco?

A. The Bank of California National Association, American Trust Company, Wells Fargo Bank & Union Trust Company, Crocker First National Bank, Bank of America, Anglo California National Bank & Trust Company.

Q. Which of those banks would you describe as the principal banking connection of the company?

A. The American Trust Company, I would think.

Q. When did the company first enter into banking arrangements with the banks that you have just mentioned?

A. The Crocker National Bank—it was then the Crocker-Woolworth — We had banking connections with them in 1903. Also with the then Mercantile Trust Company, which afterwards became the

(Testimony of David Hiram Foote.)

American Trust Company; and also with [256] the Bank of California, I think at that time.

Now—let me see—when we took over the San Francisco Gas & Electric Company they were dealing with the Donohoe-Kelly Bank. They have gone out of existence a number of years ago. I think they were taken over by the Bank of America, Bank of Italy at that time, which afterwards changed to the Bank of America. That was our first dealing with them—that is, the Pacific Gas and Electric Company dealings, although the San Francisco Gas & Electric Company had dealt with that bank for many years prior. In fact, the President of that bank, I think, was at one time a director of the San Francisco Gas & Electric Company. That was before we took them over.

Then—let me see—we did some business with the Wells Fargo Bank & Union Trust Company oh, many many years ago—I can't remember just when. It was after those other banks though. By the way, it was then the Union Trust Company of San Francisco that we started business with and they afterwards went into the Wells Fargo Bank & Union Trust Company. That was the way that was.

Then—let me see—the Bank of America came into existence and they solicited us for accounts. They also took over a large number of our banking depositaries in the country. We have some 250 banks in the country. The Bank of Italy, in their branch banking, they took over a large number of

(Testimony of David Hiram Foote.)

these banks that we had already selected as depositaries, and they [257] were approved by our Board of Directors as depositaries. In that way we formed a connection with the Bank of America.

The Anglo California Bank, we had business with them many years ago, but I can't just remember when that was done. They had a special account that they paid us interest on. Then afterwards we opened a general banking account after we took over the Great Western. I think that was in 1930.

Q. So that your principal banking connections, the American Trust and its predecessor the Mercantile Trust Company, the Bank of California and the Crocker National Bank, you have had since approximately 1903?

A. Yes, sir. The others were taken in purely as matters of convenience and also they were able, they were willing to pay us interest on some of our accounts, 30-day accounts.

Q. Now, within recent years has the company had occasion to borrow moneys? A. No.

Q. When the company did borrow money where did it borrow money principally?

A. Oh, that was many years ago. It has been many, many years since we borrowed any money on notes. I think we borrowed money of the Hibernia Bank at one time.

Q. But it has been many, many years since the company——

(Testimony of David Hiram Foote.)

A. (Interposing) Thirty years ago since we borrowed [258] money, I think; yes.

Q. Now, what banking connections does the company have in New York City?

A. The Bankers Trust Company and the National City Bank of New York.

Q. How long have you had those banking connections?

A. 25 years I think, fully. I think the Bankers Trust Company, somewhere around 1912 to 1914, somewhere in there, we started business with them. That was about the time that we established a transfer agency for our stock in New York and we naturally went to the Bankers Trust Company.

Q. How long ago was the connection established with the National City Bank of New York?

A. About the same time; a little later, I think a year or two later.

Q. For what purposes do you maintain balances in those banks in New York?

A. The balance in the Bankers Trust Company is entirely for the purpose of paying checks that we draw on them to pay for material and supplies purchased in the east, in any of the esatern states. For instance, purchases from the General Electric Company, or the Westinghouse Company, we pay their bills usually by checks drawn on the Bankers Trust Company because it would be more convenient for them. We maintain a balance for that purpose

(Testimony of David Hiram Foote.)

and we also maintain it for paying [259] bond interest coupons in New York. For those two purposes I think is all we keep that bank account for.

Q. Now, in the National City Bank of New York do you keep that account for any particular purpose?

A. No, except that our dividend checks, while they are drawn on the American Trust Company on a dividend account, we have an arrangement by which those checks may be negotiated in New York City at the National City Bank of New York, but that arrangement is made entirely through the American Trust Company. We don't have any direct dealings on that subject. We keep a small balance there, some $100,000.

Q. Do you have deposits in any other banks in the United States outside of California?

A. We have an account in Chicago in the Continental National—I've forgotten the name.

Q. . The Continental Illinois Trust Company?

A. Yes—it was the Illinois Trust Company at one time. They changed the name. But that account is kept solely for the purpose of cashing coupons in Chicago, bond interest coupons. Our bond interest coupons on our first refunding bonds are payable in Chicago and in New York City and in San Francisco. That account in Chicago is kept solely for that purpose. We have no other use for it.

Q. Have you any other bankng accounts outside of California? [260] A. We have not.

(Testimony of David Hiram Foote.)

Q. Is it fair to say that all of your principal banking connections are in San Francisco?

A. I think so; absolutely.

Q. They have been there for over 30 years?

A. Yes.

Q. What trust company acts as trustee under the company's bond mortgage?

A. The American Trust Company; and they have a New York trustee, the City Bank-Farmers Trust Company.

Q. That is a co-trustee?

A. That is a New York trustee, a co-trustee; yes.

Q. What connection, if any, has the City Bank-Farmers Trust Company with the National City Bank?

A. I think, my recollection is that the National City Bank was the trustee, New York trustee, and then under amendment of the law they separated their trust department from their banking department and formed the City Bank-Farmers Trust Company. That company also took over the Farmers Trust of New York.

Q. Mr. Foote, has the American Trust Company and its predecessors been for many yeas the principal trustee under the various bond mortgages of the company?

A. Yes. There was one mortgage where the Bankers Trust Company was trustee, a general refunding mortgage. [261]

(Testimony of David Hiram Foote.)

Q. That has been paid off?

A. Yes. Those bonds were called and they have been paid off, all except about $20,000 which haven't been presented yet, but the money is in the hands of the trustee for that purpose.

Q. But the American Trust Company has always been the principal trustee?

A. Yes—well, not under that mortgage.

Q. I mean the principal——

A. (interposing) Yes.

Q. You have had many mortgages in the past?

A. Yes, but the American Trust Company has been the principal one, that is true.

Mr. Phleger: I offer in evidence a statement headed "Pacific Gas and Electric Company Corporate Chart Showing Applicant's Utility and Non-Utility Subsidiaries and the Percentage of Voting Securities of Each Such Subsidiary Owned as of June 30, 1940."

I might state that this exhibit has been prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: This chart will be received in evidence and marked as Applicant's Exhibit No. 12.

(The chart above referred to was marked Applicant's Exhibit No. 12 and received in evidence.) [262]

Mr. Troy: Have you an extra copy of that?

Mr. Phleger: I will give you one later if you want it.

(Testimony of David Hiram Foote.)

May that be received?

The Examiner: It has been received and marked as Applicant's Exhibit No. 12.

By Mr. Phleger:

Q. Mr. Foote, I direct your attention to Exhibit 12. Will you state whether or not that was prepared under your direction?

A. It was not prepared under my direction, but I have examined it and it is correct.

Q. It is correct as shown by the books and records of the Applicant? A. That is true.

Q. Will you state generally what it shows?

A. Well, it shows the names, subsidiaries of the company and the percentage of voting power owned by the Pacific Gas and Electric Company.

Do you want me to particularize further?

Q. Let me ask you this: The San Joaquin Light & Power Company, is that company now in process of dissolution?

A. The corporation. There is a San Joaquin Light & Power Company. The San Joaquin Light & Power Corporation is in process of dissolution at the present time.

Q. Has the Applicant acquired all of its properties? [263] A. Yes.

Q. The Valley Electrical Supply Company, what business does it engage in?

A. It engages purely in the sale of electrical equipment.

(Testimony of David Hiram Foote.)

Q. Its activities are entirely confined to the State of California, are they?

A. Entirely so; yes.

Q. The Arlington Properties Company, Ltd., what does that company do?

A. That company holds lands, in-operative lands that we don't wish to put under our first refunding mortgage. In other words, we want to sell them and that would relieve us of the necessity of obtaining releases of the mortgage, so that the lands are put in the name of the Arlington Properties Company.

Q. Is it a public utility? A. It is not.

Q. Are all of its properties located in the State of California? A. They are.

Q. What is the approximate book value of its assets?

A. $530,000-odd, $538,000, I think is correct. I know it is correct.

Q. The Crystal Lake Company, Ltd., what does that [264] company do?

A. That has water rights in the upper regions of Hat Creek.

Q. Is it a subsidiary of Arlington Properties Company, Ltd.?

A. Its stock is in the name of the Arlington Properties Company, Ltd.; yes.

Q. Are all of its properties located in the State of California? A. They are.

Q. And what is the approximate book value of those properties? A. Around $60,000.

(Testimony of David Hiram Foote.)

Q. The Western Canal Company, what does that company do?

A. The Western Canal Company is engaged in the sale of water for irrigation purposes.

Q. Are its properties entirely located in the State of California? A. They are; yes.

Q. What is the approximate book value of its assets? A. Approximately $900,000.

Q. Are all of these corporations California corporations? A. They are. [265]

Q. The Standard Pacific Gas Line, Inc., what is its business?

A. Its business, it is the owner of the natural gas line from lower California. It is owned in conjunction with the Standard Oil Company of California. We own 50 percent of the line and they own 50 percent of the line.

Q. You stated that it owns a pipe line from lower California. You mean from southern California?

A. I mean from southern California; yes.

Q. Is it a public utility company?

A. I believe not.

Q. Are all of its properties located in the State of California? A. Yes, they are.

Q. What is the total book value of your investment in that company?

A. Well, I think a little over $8,000,000. It is stated here as $8,370,000.

(Testimony of David Hiram Foote.)

Q The Vallejo Electric Light & Power Company, what is its business?

A. It is a public utility serving Vallejo and vicinity.

Q. What percentage of its stock is owned by the Pacific Gas and Electric Company?

A. 45.6 percent—something like that. Well, it is 45.8 percent as shown here.

Q. Are both the Standard Pacific Gas Line, Inc. and [266] the Vallejo Electric Light & Power Company California corporations? A. They are.

Q. Are all of the properties of the latter company located in the State of California?

A. They are.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 13 a statement headed "Pacific Gas and Electric Company Securities Issued by any Public Utility or Holding Company and Owned by the Applicant as of July 31, 1940."

This exhibit was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 13.

(The statement above referred to was marked Applicant's Exhibit No. 13 and received in evidence.)

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Mr. Foote, I direct your attention to Exhibit 13. Was it prepared under your direction?

A. I think you might say that, yes; in conjunction with the controller's department.

Q. Are the facts and figures appearing on it true and correct? A. They are.

Q. It shows, does it not, the stocks of the public [267] utilities owned by the Applicant as of July 31, 1940? A. It does.

Q. Has the company acquired any securities of any public utility or holding company since July 31, 1940? A. No, sir, it has not.

Q. So the statement is also correct as of this date? A. Yes, sir.

Q. Will you state whether or not these securities are in your possession as Treasurer?

A. Yes, they are.

Q. Physically in your possession?

A. Well, I think the Western Canal stock and the Vallejo Electric Light & Power Company stock are deposited with the American Trust Company as trustee under the first refunding mortgage.

The other stocks are small holdings and are in my possession. They came to us when we purchased one of our subsidiary companies, the Modesto Gas Company. They were owned by the Modesto Gas Company and we acquired ownership that way.

Q. So that all of the securities, with the exception of the Western Canal Company and the Vallejo

(Testimony of David Hiram Foote.)

Electric Light & Power Company, came to the company through the dissolution of the Modesto Gas Company? A. That is right. [268]

Mr. Phleger: I offer in evidence as Applicant's Exhibt 14 copies of the original Articles of Incorporation of the Pacific Gas and Electric Company and amendments thereto.

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 14.

(The Articles of Incorporation above referred to were marked Applicant's Exhibit No. 14 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, addressing your attention to Exhibit 14, does that exhibit contain a true and correct copy of the original and amended articles of the Pacific Gas and Electric Company?

A. It does.

Q. The company is a California corporation, is it? A. Yes.

Q. And has had continuous existence since its first incorporation?

A. Yes it has, being October 1905.

Q. What statements does the company regularly send out to its stockholders?

(Testimony of David Hiram Foote.)

A. The annual statement for each year ended December 31, and also quarterly statements, interim quarterly statements for the quarters ending March, June and September. [269]

Q. When is the annual stockholders meeting of the company held?

A. It is held—where, did you say?

Q. When?

A. On the second Tuesday in April of each year.

Q. Is a copy of the annual report sent out to the stockholders in advance of that meeting?

A. Yes, we endeavor to do so and usually do.

Q. Sufficiently in advance so that it is received by the stockholders before the meeting?

A. That is the intention, yes. Of course, it is sometimes pretty hard to get that statement out before the annual meeting because it involves a great deal of detail, and we want to get the certificate of independent auditors, and all that sort of thing, and it takes a great deal of time and care in its preparation.

Q. It is the practice usually to send out the notice of the annual meeting and a form of proxy to the stockholders when the annual report is sent out to them?

A. No. We cannot get the annual report out quite in time for that. It is a little too short a time between—let me see, January, February—it is a little too short a time to ge that annual report out. If we wanted to get the annual report ready to send

(Testimony of David Hiram Foote.)

out with the proxy forms it wouldn't give sufficient time to get the proxies in. [270]

Q. How long prior to the annual meeting is it the practice to send out notice of the meeting and a proxy form?

A. Oh, about the middle of February.

Q. About the middle of February?

A. Yes.

Q. And the annual report goes out usually how long in advance of the meeting?

A. Oh, it is pretty hard to say.

Q. Approximately?

A. Oh, a week or ten days.

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 15 a bound volume which includes the annual reports of the Applicant to its stockholders for the years 1929 to 1939 inclusive.

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 15.

(The bound volume of annual reports above referred to was marked Applicant's Exhibit No. 15 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, that exhibit contains, does it, copies of the annual reports I have just mentioned?

A. To the best of my knowledge and belief it does. These were gathered under my direction in

(Testimony of David Hiram Foote.)

my department. I [271] believe that is a complete statement.

The Examiner: Does that include only the annual reports, or does it include the interim reports?

The Witness: Only the annual reports.

Mr. Phleger: Only the annual reports.

I now offer in evidence as Applicant's Exhibit 16 a chart headed "Pacific Gas and Electric Company Chart Showing Members of the Board of Directors, January 1, 1920 to September 30, 1940." I ask that it be received in evidence.

The Examiner: It will be received in evidence and marked Applicant's Exhibit 16.

(The chart above referred to was marked Applicant's Exhibit No. 16 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, has Exhibit 16 been checked by you? A. Yes.

Q. And does it show accurately the statistics with respect to the names and dates of election, and length of service of all of the directors of the Pacific Gas and Electric Company during the period stated?

A. It does. There are two inaccuracies in it. One is in the spelling of Mr. Livermore's name. It is put down here as "Livernore" instead of "Livermore".

Another inaccuracy is in the initials of Mr. Wal-

(Testimony of David Hiram Foote.)

lace Alexander's name. His name is W. M. and it is put down here [272] as "W. H."

The Examiner: W. M. Alexander is correct?

The Witness: Yes. It hasn't been corrected on the copy I have here.

The Examiner: The copy that has been received in evidence has been corrected.

The Witness: Oh, that is all right then. The one I have hasn't been corrected. This one (indicating) has been corrected. That is right.

How about Mr. Livermore's name? That hasn't been corrected.

By Mr. Phleger:

Q. Your comment is correct. Aside from that, it is correct? A. Yes.

Q. Now, you will notice——

Mr. Gerdes (interposing): Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Mr. Foote, the chart indicates by horizontal lines the service of each director, does it not?

A. It does.

Q. When a horizontal line terminates by a heavy line, [273] and a new name appears as a director, is it a fact that the records show that the new director succeeds to the vacancy created by the death or resignation of the man whose name appears on the same line but to the left?

(Testimony of David Hiram Foote.)

A. That is right; yes.

Q. For example, let us take line 5, William G. Henshaw. A. Yes.

Q. On the same line to the right his name is followed by Charles L. Barrett.

A. That is right.

Q. Do the minutes show that Mr. Barrett was elected to the vacancy caused by the death of Mr. Henshaw? A. Yes, sir.

Q. And do the records show that Mr. Chickering succeeded to the vacancy created by the resignation of Mr. Barrett? A. It does.

Q. Similarly with respect to——

A. (interposing) John A. Britton, the same thing.

Q. That is true also as to each of the directors named? A. Yes.

Q. Now, let us go down this chart and take the directors, say, in 1921. On the first line that is your own name? A. Yes, sir. [274]

Q. Were you at that time a Vice-President of the company? A. 1914?

Q. This is 1921 we are talking about.

A. Yes, that is right.

Q. Now, the next line is Mr. C. O. G. Miller. He was then a director, was he not?

A. He was.

Q. He is now a director? A. He is.

Q. And he was first elected in 1921?

A. Yes, sir.

(Testimony of David Hiram Foote.)

Q. And served continuously since that date?

A. Yes, sir.

Q. The next line is Mr. John D. McKee. He was a director in 1921, was he not? A. He was.

Q. He is a director today?

A. Yes, and has served continuously since that time.

Q. And has served continuously since his electon in 1914? A. Yes, he has.

Q. Who is Mr. McKee?

A. He is Chairman of the Board, I believe, of the American Trust Company. [275]

Q. Norman B. Livermore, he was a director in 1921, was he not? A. He was.

Q. He is a director now? A. Yes.

Q. And he has served continuously since his election in April of 1920, has he not?

A. Yes.

Q. He served as a director prior to that date also, did he not?

A. I couldn't tell you that. I have forgotten that.

Q. Just refer to the chart.

A. I don't think he did, did he?

Q. Prior to 1920?

A. That was when he was elected a director.

Q. Well, it is not important, but you will remember when he resigned when he went to war?

A. Oh, I do most decidedly. I had forgotten that.

(Testimony of David Hiram Foote.)

Q. He had been director for many years before the war, had he not?

A. I believe that is true; yes.

Q. William G. Henshaw, who is he?

A. William G. Henshaw, he was a San Francisco capitalist and businessman.

Q. He had served for many years as a director? [276]

A. Yes.

Q. His position is now occupied by Mr. A. L. Chickering, is it not? A. Yes, that is right.

Q. And Mr. Chickering has served continuously since 1927? A. That is right.

Q. Now, who is John A. Britton, who was a director in 1921?

A. He was the first president of the Pacific Gas and Electric Company and afterwards its vice-president and general manager.

Q. He served as a director for many years?

A. Oh, yes.

Q. And was one of its principal executive officers? A. Absolutely; yes, sir.

Q. He had been one of the principal officers of one of the predecessor companies of the Pacific Gas and Electric Company?

A. Yes. He was president of the Oakland Gas Light & Heat Company.

Q. His position is now occupied by Mr. Paul Downing? A. That is right.

(Testimony of David Hiram Foote.)

Q. Now, John S. Drum, he was a director in 1921, was he not? [276-A] A. Yes, he was.

Q. And he continued as a director until 1930?

A. That is right.

Q. Who was Mr. Drum?

A. He was a brother of Frank G. Drum, and he was one time president of the Mercantile Trust Company, afterwards American Trust—it may have been the American Trust when he was president.

Q. He served for many years as a director, did he not? A. Yes, sir, he did.

Q. And was he extremely active in its affairs?

A. Oh, yes.

Q. Particularly in its financial affairs?

A. Yes, I think so; yes, sir.

Q. His position on the directorate is now filled by James B. Black? A. Yes; that is right.

Q. Now, W. E. Creed, he was a director in 1921, was he not? A. Yes.

Q. He was president of the company for a period of years? A. Yes, for a period of years.

Q. His position is now occupied by John P. Coghlan, is it not? A. Yes, it is. [277]

Q. Mr. A. F. Hockenbeamer, he was a director in 1921? A. Yes.

Q. And what other positions did he hold at that time?

A. In 1921 I think he was Treasurer, Vice-President and Treasurer.

(Testimony of David Hiram Foote.)

Q. He later succeeded Mr. Creed as President, did he not? A. He did.

Q. His position as director is now filled by Mr. Fogarty? A. Yes, sir.

Q. Frank B. Anderson was a director in 1921?

A. Yes.

Q. Did he serve for many years as a director of the company? A. Yes, for many years.

Q. Did Mr. McIntosh from time to time alternate with him in that position?

A. Yes, a few times. Mr. Anderson would go out of town—he went abroad once and he resigned and Mr. McIntosh—they were both officials of the Bank of California, and Mr. Anderson was Chairman of the Board and Mr. McIntosh was President. When Mr. Anderson resigned Mr. McIntosh would take his place temporarily.

Q. And on the death of Mr. Anderson, Mr. McIntosh was [278] elected to his vacancy, was he not? A. Yes.

Q. Was Mr. Anderson active in the affairs of the company? A. Yes, he was.

Q. He was very active, wasn't he?

A. Extremely active; yes.

Q. Did he pay attention particularly to the financial matters?

A. Indeed he did. He was on our Executive Committee.

Q. H. E. Bothin, he was a director in 1921?

A. Yes.

(Testimony of David Hiram Foote.)

Q. Who was he?

A. Mr. Bothin was a local businessman and capitalist, I guess you would call him.

Q. He was a substantial stockholder in the company? A. Yes.

Q. And a San Francisco resident?

A. Yes.

Q. His position is now occupied by A. E. Wishon, is it not? A. Yes, sir.

Q. Mr. F. G. Drum was in 1921 a director of the company? A. Yes.

Q. Did he occupy any official position? [279]

A. He was president and resigned and Mr. Creed took his place.

Q. Did he become Chairman of the Board?

A. I don't think so—I have forgotten that.

Q. He remained active, did he not, in the affairs of the company?

A. Yes, he did. He remained active in the affairs of the company. I don't think that we have ever utilized the office of Chairman of the Board to my recollection. If so, it was for a very short period.

Q. His office was subsequently filled by W. M. Alexander, was it not? A. Yes.

Q. Who was Mr. Alexander?

A. He was a San Francisco capitalist associated largely, I think, with the sugar industry in Hawaii.

Q. That office of director is now filled by Mr. Silas H. Palmer, is it not? A. Yes, it is.

(Testimony of David Hiram Foote.)

Q. Who was John A. McCandless?

A. He was a local businessman, also largely interested in the Hawaiian sugar industry.

Q. Was he a large stockholder of the company?

A. Yes.

Q. Is the position which he then held, the office [280] now held by Herbert C. Freeman?

A. Yes, sir.

Q. Now, W. H. Crocker was a director in 1921, was he not? A. Yes, he was.

Q. Who was W. H. Crocker?

A. He was president of the Crocker National Bank, then Crocker-Woolworth, or Crocker First National Bank—there were several changes in name—but he was always president of that bank.

Q. Had he been a director for many years?

A. Yes.

Q. And continued as a director until some time in 1937 when he died? A. That is right.

Q. And was his position filled by his son?

A. By his son, W. W. Crocker. He is now president of that bank.

Q. Was Mr. Crocker and his family and related interests heavily interested in the company?

A. Yes, they were always.

Q. And was Mr. Crocker connected with one of the predecessor companies of the P. G. & E.?

A. I believe he was; yes, I think he was connected with the California Corporation to the best of my recollection. [281]

(Testimony of David Hiram Foote.)

Q. And Mr. F. T. Elsey was also a director in 1921, was he not? A. Yes.

Q. Who was he?

A. He was a local businessman, a capitalist, and he was president of the American Trust Company. He was also president, I think, of the Palace Hotel Company.

Q. Did he represent any particular interest, do you recall?

A. Yes. He represented the Tevis Estate.

Q. An old California estate? A. Yes.

Q. He continued as a director until his death early in 1938, did he not? A. He did.

Q. And his place on the Board has been filled and is now held by Mr. Nichols?

A. Yes; that is right.

Q. Was Mr. Elsey active in the affairs of the Pacific Gas and Electric Company?

A. Very decidedly so.

Q. He was an extremely active director?

A. Yes. He was a very warm friend of Mr. Hockenbeamer's and they, I know they were very active together in talking about the affairs of the company. [282]

Q. He took a great deal of interest in it?

A. Yes; a great deal of interest.

Q. Particularly in financial matters?

A. Absolutely.

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 17 a chart headed "Pacific Gas and

(Testimony of David Hiram Foote.)

Electric Company Chart Showing Members of the Executive Committee of the Board of Directors, January 1, 1920 to September 30, 1940."

This material was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The chart will be received in evidence as Applicant's Exhibit No. 17.

(The chart above referred to was marked Applicant's Exhibit No. 17 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, have you checked Exhibit 17?

A. Yes.

Q. Are the facts and figures there set forth true and correct?

A. Now, I haven't one of the corrected forms, but in the original form there were some slight errors.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record. [283]

By Mr. Phleger:

Q. So Exhibit 17 is true and correct, is it not?

A. Yes, sir.

Q. That chart was prepared in the same manner as the preceding chart, was it not?

A. Yes, it was.

(Testimony of David Hiram Foote.)

Q. And it shows on separate horizontal lines the membership during the period indicated of members of the Executive Committee? A. Yes.

Q. And the particular position on the Executive Committee occupied by any designated director is shown by the minutes to have been occupied by the director whose name appears on the chart on the same line, but to the right? A. That is right.

Q. For example, let us take the position of F. G. Drum. His position on the Executive Committee was subsequently filled by Mr. Elsey, was it not? A. Yes.

Q. And the same position is now filled by Mr. Palmer? A. Yes, that is right.

Q. And those successions to the particular office are shown by the minutes of the Executive Committee, are they not?

A. Yes—the minutes of the Board.

Q. Of the Board—you are correct. The members of [284] the Executive Committee are elected by the Board, are they not? A. They are.

Q. How many members are there now in the Executive Committee?

A. There are five members. The President is an ex-officio member, in accordance with the by-laws. The by-laws provide that the president shall be an ex-officio member of the Committee. There are four other members of the Board on that Committee.

Q. At one period between 1930 and 1935 were there six members on the Executive Committee?

(Testimony of David Hiram Foote.)

A. There were; yes.

Q. But there are now but five members?

A. Only five now.

Q. The position filled by Mr. Frank B. Anderson was not filled after his death?

A. I believe that is true; I know it is so.

Q. Now, the men whose names appear on this sheet as members of the Executive Committee are the men whom I have just questioned you with respect to their service as directors?

A. Yes; that is right.

Q. The *Board* now consists of the President, Mr. Black, as an ex-officio member——

A. (interposing) That is right. You said the "Board".

Q. I mean the Executive Committee. [285]

A. Yes.

Q. The Executive Committee consists of Mr. Black, ex-officio member, President, Mr. Palmer?

A. Yes.

Q. Mr. Miller? A. Yes.

Q. Mr. Chickering? A. Yes.

Q. And Mr. Livermore?

A. That is right.

Q. Do other officers of the company regularly attend meetings of the Executive Committee?

A. They do.

Q. Who are they?

A. Mr. Downing, First Vice-President and General Manager; Mr. Wishon, Vice-President and As-

(Testimony of David Hiram Foote.)

sistant General Manager; Mr. Coghlan, Vice-President and Assistant to the President—they are invited by the Executive Committee, that is, they have been invited by resolution of the Executive Committee to attend meetings of the Committee regularly?

Q. Yes.

A. I attend as Secretary under the by-laws. The by-laws provide that the Secretary shall be Secretary of the Executive Committee.

Q. You keep the minutes, do you? [286]

A. I do.

Q. What is the procedure at the meetings of the Executive Committee?

A. Well, the first proceeding is a reading of the minutes of the prior meeting.

Then the General Manager makes a verbal report of the company's operations during the past week compared with the same week in the year before.

His report covers, he reads his report from prepared reports, written reports. He goes over the salient features of them. One is a report of the electric output; another is a report of rainfall and snow coverage.

Then there is a report of gas output, natural and also manufactured.

Then there is also a report of new business connected during the week compared with the same week the year before.

Then he submits a list of construction jobs and estimated cost of them. They are gone over very

(Testimony of David Hiram Foote.)

carefully and explained to the Committee. Then the Committee approves them, or disapproves them. They rarely disapprove because they are always in good shape.

Then the General Manager also submits resolutions authorizing the execution of, perhaps, quick claim deeds for rights of way that are no longer useful to the company, or for changes in the rights of way, easements that the company has. [287]

Then he may submit resolutions authorizing the acceptance of licenses issued by the Federal Power Commission, or applications for amendments to such licenses.

Anything of that nature that has to be acted on he submits in resolution form and the resolutions are adopted.

That is about what the General Manager does.

Then the other officers of the company, the Vice-President and Assistant to the President, may make a report on matters coming under his immediate jurisdiction.

Also the Vice-President and Assistant to the General Manager makes a report, a verbal report, of matters coming under his jurisdiction.

The President submits a regular weekly report which shows the condition of the finances of the company, cash, and his report also may have in it a complete report of consumers, consumers' report, number of consumers in each division.

(Testimony of David Hiram Foote.)

That report may also cover a report which is submitted monthly of completed G. M. jobs and those are gone over. That report shows the amount expended, the amount estimated for each job, and the amount expended, and the committee then by resolution approves any over-expenditures, amounts expended over estimates, and cancels any amounts, any estimates that are made that are not required after the job is completed. That report also shows the total expenditures made by the company, construction expenditures, and that is approved by [288] the Committee.

So the whole thing is approved.

Then the President will bring to the attention of the Committee all important matters that may affect the company's interests. He discusses them very fully and gives his ideas of what should be done, what he has done. I think he invariably states, "Now, if any of the members of the Committee disapprove, or would like to make any suggestions, why I am only too glad to receive them."

Perhaps no action is taken, but what has been done in the company's affairs is brought up each week to date so that the Committee is fully informed as to all matters going on. For instance, this Hetch Hetchy business, and the conditions all over the company's territory that might be important, such things are discussed, and other things that the Committee should be informed about.

(Testimony of David Hiram Foote.)

Q. How often does the Executive Committee meet? A. Once a week always.

Q. Does it meet regularly?

A. Regularly on Tuesday afternoon.

Q. Is it the practice to discuss at numerous meetings important subjects, that is, over a series of meetings? A. It is.

Q. Do the members of the Executive Committee discuss and debate freely the matters which are brought before it? [289]

A. Absolutely; very freely.

Q. They are quite outspoken, are they?

A. Yes.

Q. How about the officers, other than the President, that attend those meetings, do they all discuss matters freely? A. Yes, they do.

Q. And their opinion and advice is frequently asked by the other members of the Executive Committee? A. It is.

Q. Is it the practice of the President, in connection with important matters, to bring them up for discussion usually well in advance of the time of decision? A. Yes, it is.

Q. And it is a fact that he usually does not formulate his own recommendation until after considerable discussion, sometimes over a long period, with the Executive Committee?

A. Yes, I think that is exactly right.

Q. He knows what the Executive Committee

(Testimony of David Hiram Foote.)

views are on important matters before he makes a recommendation?

A. Absolutely. Sometimes the Executive Committee may take a little different view of something and then they will discuss that and it is always thrashed out to satisfaction so that when final action is taken it is unanimous.

Q. And the President's views with respect to important matters are very often colored or changed, or otherwise [290] acted upon by the viewpoint of his Executive Committee, are they not? A. I think so; yes.

Q. Does the Executive Committee consider and debate important rate matters? A. Yes.

Q. All important rate matters are taken up with the Committee? A. Yes, they are.

Q. And does it also pass on all salary matters of more than $300? A. It does; yes.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 18 a chart headed "Pacific Gas and Electric Company Chart Showing Principal Officers, January 1, 1920 to September 30, 1940, and Lengths of Service with P. G. & E. and Predecessors."

This also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The chart will be received in evidence and marked Applicant's Exhibit No. 18.

(The chart above referred to was marked Applicant's Exhibit No. 18 and received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: Before we proceed I think we had better take a short recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [291]

The Examiner: We will resume now.

Are you ready, Mr. Phleger?

Mr. Phleger: Yes.

The Examiner: You have just introduced Exhibit 18.

By Mr. Phleger:

Q. Mr. Foote, have you checked Exhibit 18 and are all of the facts shown there true and correct?

A. Yes, they are.

Q. Now, that chart shows, does it not——

A. (interposing) May I say that there was one correction I found there. I don't know whether that has been made on the chart you have here, that date here (indicating).

The Examiner: As to yourself, Mr. Foote?

The Witness: Yes sir.

The Examiner: August 16th?

The Witness: Yes.

The Examiner: The document received in evidence is corrected to read August 16, 1927.

The Witness: That is right.

The Examiner: The date you were elected vice-president secretary and treasurer.

The Witnes: That is right.

The Examiner: All right.

The Witness: Well, August 16, 1907——

(Testimony of David Hiram Foote.)

The Examiner (interposing) '27. [292]

The Witness: '27; that is right; that is right.

By Mr. Phleger:

Q. Now, Mr. Foote, this chart shows the various positions held by the various officers of the company during the period 1920-1940, does it not?

A. It does.

Q. Each horizontal line is an office and the successive names indicate the successive holders, is that correct? A. They do; that is right.

Q. And following on the right opposite the name of the present incumbent is the length of service of that incumbent officer with Pacific Gas and Electric Company and its predecessor? A. Yes.

Q. Now, let us take, for example, the president, Mr. Black. The chart shows, does it not, that he has been ten years with the Pacific Gas and Electric Company, that he was with its predecessors for 18 years, and that the total service with P.G.&E. and its predecessors is 28 years.

A. Yes, that is right.

Q. Let us take yourself, for example; that shows 35 years service with the Pacific Gas and Electric Company? A. That is right.

Q. That is as long as the company has been in existence? [293] A. Yes sir.

Q. It shows in the next column two years service with predecessors. That was your service with the San Francisco Gas and Electric Company?

A. No.

(Testimony of David Hiram Foote.)

Q. California——

A. (interposing) California Gas and Electric Corporation.

Q. California Gas and Electric Corporation, making a total service of 37 years, is that correct?

A. That is right; that is correct.

Q. Now, I direct your attention to the chart which shows that Mr. Hockenbeamer succeeded Mr. Creed as president on August 14, 1927.

A. That is correct.

The Examiner: 16th.

By Mr. Phleger:

Q. 16th; that is the date that you corrected.

A. No, no—that is correct, August 16th, 1927.

Q. That is right. That is the same date that you corrected, I believe.

On that date Mr. Hockenbeamer ceased to be treasurer of the company, did he not? A. He did.

Q. And on that same date you succeeded Mr. Hockenbeamer [294] as treasurer.

A. I did, that is right, retaining my positions as vice president and secretary.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 19 a statement headed "City Gas & Electric Company, dates of meetings of Executive Committee and Board of Directors from June 1, 1930 to September 10, 1940; the attendance of representatives of the North American Company or Western Power Corporation being shown at the end of the statement".

(Testimony of David Hiram Foote.)

This compilation was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: This document consisting of three typewritten pages will be received in evidence and marked Applicant's Exhibit 19.

(The 3 typewritten pages referred to above was marked Applicant's Exhibit No. 19 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, this exhibit has been checked by you or your office, has it?

A. Yes; it was prepared in my office from the records.

Q. And it is true and correct?

A. It is true and correct, I believe, without question.

Q. The meetings which Mr. Guy C. Earl attended are indicated by an asterisk, are they not?

[295]

A. No.

Q. Or, the meetings he did not attend are marked with an asterisk?

A. Yes, he attended all meetings except those that are marked with an asterisk.

Q. During his term of office? A. Yes sir.

Q. He was a fairly regular attendant?

A. Oh, yes, very.

Q. Mr. Black, while an officer of the North American Company and while a director of the

(Testimony of David Hiram Foote.)

Pacific Gas and Electric Company, that is to say, in the years 1930 to November 1935, attended but four meetings, is that correct?

A. That is correct, four meetings of the Board of Directors.

Q. That is right.

A. And one meeting of the Executive Committee.

Q. The meetings he attended of the Board of Directors were June 18, 1930; July 22, 1931; September 4, 1935 and September 11, 1935?

A. That is correct.

Q. And the meeting of the Executive Committee which he attended was on June 24, 1930?

A. That is correct.

Q. Now, Mr. Gruhl, who was an officer of the North [296] American Company and was a director of the Pacific Gas and Electric Company——

A. (interposing) Yes.

Q. For the period June 18, 1930 to January 22, 1933 attended but one meeting, that of June 18, 1930? A. That is correct.

Q. Mr. F. W. Doolittle, an officer of the North American Company who served as a director from January 17, 1934 to November 23, 1936 attended but one meeting, that of September 21, 1936, is that correct? A. That is correct, yes sir.

Q. F. L. Dame, an officer of North American who served as a director from February 15, 1933

(Testimony of David Hiram Foote.)

until December 30, 1933 never attended a single meeting, did he? A. Never; he did not.

Q. Mr. James F. Fogarty, an officer of North American Company, who is now a director and has been a director since December 18, 1935, has never attended a meeting, is that correct?

A. That is correct.

Q. Mr. H. C. Freeman, an officer of North American Company, who is now a director of Pacific Gas and Electric Company, and who has been a director since December 16, 1936, has never attended a meeting of the Board of Directors, is that correct? [297]

A. That is right; that is right.

Mr. Phleger: I now offer in evidence and ask it be marked Applicant's Exhibit 20 a statement headed "Pacific Gas and Electric Company—" this is sheet 1—"twenty largest holders of 6% first preferred stock, June 30, 1940"; a second sheet headed "Twenty largest holders of 5½% first preferred stock, June 30, 1940", and a third sheet headed "Twenty largest holders of common stock, June 30, 1940."

This exhibit also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: As has been indicated the exhibit consists of three typewritten pages and will be received as Applicant's No. 20.

(Testimony of David Hiram Foote.)

(The 3 typewritten pages referred to above were marked Applicant's Exhibit 20, and were received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 20 prepared under your direction? A. It was.

Q. And it is true and correct, is it?

A. Yes sir.

Q. The names appearing on it appear on your stock books and records? A. They do.

[298]

Q. And the addresses are the addresses which are also registered on your books?

A. That is right; yes, that is right.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 21 a statement headed "Pacific Gas and Electric Company, distribution of each class of stock as to number of shares held, June 30, 1940."

This also was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: The document will be received in evidence and marked Applicant's Exhibit No. 21.

(The statement referred to above was marked Applicant's Exhibit No. 21 and was received in evidence.)

By Mr. Phleger:

Q. Was Exhibit 21 prepared under your direction? A. It was.

Q. And is it true and correct?

(Testimony of David Hiram Foote.)

A. It is, I believe.

Q. It shows that the company as of June 30, 1940, had 95,836 stockholders; does it not?

A. It does.

Q. Of whom 16,988 were stockholders of 5½ per cent preferred? A. Yes sir. [299]

Q. 42,206 were holders of 6 per cent first preferred and 36,642 were holders of common stock?

A. That is right.

The Examiner: Some persons, of course, own both or all three of these same classes of stocks so there might be some duplications there?

The Witness: Yes, there might be some, yes.

By Mr. Phleger:

Q. The holder of each class of stock is counted in this compilation as a stockholder?

A. I think that is right, yes, yes.

Q. So that if the same stockholder owned three classes of stock he would appear in this statement three times?

A. No, you know that question came up and it has slipped my mind just how that was handled. I remember Mr. Holt and I talked about that. I think that this would show as three stockholders.

The Examiner: I would think so because the stock record books would show different——

The Witness (interposing): I think so; I think that is the only way we could do it.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Yes, because you have separate stock books for each class of stock?

A. Yes, each one, separate records. I think it would [300] show as three stockholders. You know, couldn't I——

Q. (interposing): We will verify that.

A. Could I verify it later?

Q. Yes, indeed. We will do that before you finish.

A. I would like to do that with Mr. Holt, our stock transfer agent who prepared it under my direction. I remember we talked about it. I have forgotten now just——

Q. (interposing) You want to remember that this all goes down and we have to pay for this record. A. Oh.

Mr. Phleger: I offer as Applicant's Exhibit 22 a statement entitled Pacific Gas and Electric Company, Number of shares of each class of stock held by residents of California and percentage of all stockholders residing in California, June 30, 1940."

The Examiner: It will be received in evidence and marked Applicant's Exhibit 22.

(The statement referred to above was marked Applicant's Exhibit No. 22 and was received in evidence.)

Mr. Phleger: This was also prepared at the request of counsel for the Securities and Exchange Commission.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. Was this exhibit prepared under your direction? A. It was. [301]

Q. It is true and correct?

A. Yes, I believe so.

Q. Now, this shows that on June 30, 1930——

The Examiner (interposing): '40.

By Mr. Phleger:

Q. (continuing) 1940, residents of California owned 5,585,241 shares of stock, is that correct?

A. That is correct.

Q. And that they constituted 72.3 per cent of all of the holders? A. Yes, that is right.

Q. Now, it will be possible, will it not, by dividing the total number of shares of stock outstanding on June 30, 1940, by the total number of shares of stock held by residents of California, namely, 5,585,241 to determine the total percentage of stock owned by residents of California, will it not?

A. I think so, yes. There are about eleven million shares outstanding, and this is about half, I think.

Mr. Phleger: Subject to verification by counsel I will state that my computations show that 48 per cent of the outstanding stock of the company as of June 30, 1940, is owned by residents of California.

The Witness: That is about right.

Mr. Phleger: And my computation, subject to verification [302] also, shows that on that date 71.8 per cent of all of the preferred stock was owned by residents of California and that 27.6 per cent of

(Testimony of David Hiram Foote.)

the common stock was owned by residents of California.

By Mr. Phleger:

Q. Those figures sound about right, do they?

A. They sound about right, yes sir.

Q. If my mathematics are correct?

A. I think that is about right.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 23 statement headed "Pacific Gas and Electric Company, statement showing total number of votes cast and the number of votes cast by the North American Company, and its known subsidiaries or affiliates at each annual stockholders meeting from 1930 to 1940 inclusive."

This statement was prepared also at the request of counsel for the Securities and Exchange Commission.

The Examiner: The instrument will be received in evidence and marked Applicant's Exhibit 23.

(The statement referred to above was marked Applicant's Exhibit No. 23 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 23 prepared by you or under your direction? A. It was. [303]

Q. And are the facts and figures there set forth true and correct.

A. I believe so, without question.

(Testimony of David Hiram Foote.)

Q. Now, that exhibit shows the dates on which the annual stockholders meetings were held in the period 1930 to 1940, does it not? A. It does.

Q. In the next column are the total votes cast?

A. That is correct.

Q. And in the following columns are the names of the North American Company and all of its known subsidiaries or affiliates and the number of shares voted by each of them respectively?

A. That is right.

Q. Either in person or by proxy?

A. That is right.

Q. By the way, do you know of any meeting of stockholders at which Frank L. Dame, Edward Gruhl, Guy Earl, F. W. Doolittle, J. F. Fogarty or Herbert C. Freeman was ever present in person?

A. I think none of them except Mr. Earl. Guy Earl may have been present—I couldn't say that—but he was living here in California.

Q. He may have been present?

A. He may have been present, yes. [304]

Q. None of the others have been?

A. None of the others have been.

Q. By the way, do you have a fairly large attendance at your stockholders meetings?

A. I think from 100 to 150 people.

Q. You have 100 to 150 people at your stockholders meetings? A. Yes sir.

Q. Where are they held?

A. In San Francisco at the office of the company, main office of the company.

(Testimony of David Hiram Foote.)

Q. There is an auditorium there, is there not, in which the meetings are held?

A. Yes, there is.

Q. Is there usually considerable newspaper publicity respecting those stockholders meetings?

A. Yes, quite a little.

Q. The stockholders show a considerable interest in those meetings?

A. Oh, yes, they do.

Q. What was the Western Power Corporation?

A. It was a subsidiary of the North American Company.

Q. Did it hold for a considerable period stock of Pacific Gas and Electric Company received in the 1930 transaction? [305] A. Yes, it did.

Q. This chart would indicate that between April 14, 1936 and April 13, 1937 the stock previously held by Western Power Corporation came into the possession of North American Company or other affiliates. A. Yes, that is right.

Q. What is Noxid & Co.?

A. It is a subsidiary of the North American Company, so I have been informed.

Q. And what is Nunn & Co.?

A. The same, a subsidiary of the North American Company.

Mr. Pheleger: I offer in evidence as Applicant's Exhibit 24 a statement headed "Pacific Gas and Electric Company, dividends paid on each class of stock, years 1930-1939 inclusive."

(Testimony of David Hiram Foote.)

This statement was also prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 24.

(The statement referred to above was marked Applicant's Exhibit No. 24 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was Exhibit 24 prepared under your [306] direction and are the facts thereon set forth true and correct? A. Yes.

Q. Now, this exhibit shows by year the actual cash paid out as dividends on the various classes of stock of the company, does it not? A. It does.

Q. With respect to the common stock it not only shows the dollar amount, but also the percentage which the cash dividends bore in relation to the par value of the outstanding stock?

A. Yes, that is right.

Q. During this entire period what was the par value of the common stock?

A. I have forgotten when that par value was changed. It was originally $100 a share and then afterwards changed—the articles of incorporation were changed, and it was reduced to $25 a share.

Q. But whether 25 or 100 the percentage is correct?

(Testimony of David Hiram Foote.)

A. That is right; that doesn't affect this percentage.

Q. Yes. Now, during the years 1930 through 1932 it shows common dividends at the rate of 8 per cent. It shows in 1933 dividends at the rate of 7 per cent. During 1933 how was that 7 per cent in dividends made up?

A. Well, let me see—they are paid quarterly, so [307] that some of them were at the rate of 8 per cent, and I guess one was at the rate of 6. That would make it, wouldn't it?

Mr. Gerdes: Two.

The Witness: Two, that is right; two at the rate of 6.

By Mr. Phleger:

Q. That would be the first two quarterly dividends at the rate of 8 per cent——

A. 8 per cent; the last at the rate of 6.

Q. 6, and the dividends remained at the rate of 6 during the calendar years 1934 and 1935, and up until the last quarter in 1936?

A. That is right.

Q. Is that correct? A. That is correct.

Q. So that the 6½ per cent dividend paid in 1936 was a 6 per cent dividend for the first three quarters? A. Three-quarters, that is right.

Q. And an 8 per cent dividend for the last quarter? A. That is right.

Q. Now, all of the dividends shown on this compilation were cash dividends, were they not?

(Testimony of David Hiram Foote.)

A. Yes, they were.

Q. It will be understood in my questions that when I refer to an 8 per cent dividend for a shorter period than a year I refer to the 8 per cent for the period and not for the [308] year.

A. It would be at the rate of 8 per cent per annum.

Q. That is right. A. Yes sir.

Mr. Phleger: I offer as Applicant's Exhibit 25 a statement prepared at the request of counsel for the Commission headed "Pacific Gas and Electric Company, record of attendance at meeting of Board of Directors and Executive Committee of the present members thereof", during the period "January 1, 1930 to September 30, 1930."

The Examiner: It will be received in evidence and marked Applicant's Exhibit 25.

(The statement referred to was marked Applicant's Exhibit No. 25 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, was this exhibit prepared under your direction and is it true and correct?

A. Yes, it was, and it is correct.

Q. Now, going down the various members of your present Board of Directors and officers it shows that before Mr. Black became president that he attended only one out of the three meetings of the Executive Committee. A. That is right.

(Testimony of David Hiram Foote.)

Q. But that since he became president out of 255 meetings he has attended 240 or 94 per cent?

[309]

A. That is right.

Q. And that whereas prior to his becoming president he attended but four meetings of the Board of Directors out of 63 or 6 per cent, that since he became president he has attended all of the 60 meetings which have been held by the company?

A. That is right.

Q. The statement shows that Mr. Chickering has attended 81 per cent of the Executive Committee meetings and 77 per cent of the directors meetings, is that correct?

A. That is right; that is correct.

Q. It shows that Mr. Coghlan has attended 93 per cent of the Executive Committee meetings and 96 per cent of the directors meetings?

A. That is correct.

Q. Mr. Coghlan is not a member, as I understand it, of the Executive Committee, but is by resolution expected to attend?

A. That is the idea, yes, invited to attend by resolution.

Q. It shows that Mr. W. W. Crocker has attended 66 per cent of the directors meetings, is that correct? A. That is correct.

Q. It shows that Mr. Downing has attended 95 per cent of the Executive Committee meetings and 94 per cent of the [310] directors meetings, is that correct? A. That is correct.

(Testimony of David Hiram Foote.)

Q. It shows that Mr. J. F. Fogarty of the North American Company has attended none of the 59 meetings of the Board of Directors since he became a director, is that correct?

A. That is correct.

Q. It shows that you have attended 98 per cent of the meetings of the Executive Committee and 100 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that of the 44 meetings that have been held since Mr. Freeman became a director that he has attended none of them?

A. That is correct.

Q. It shows, does it not, that Mr. Livermore attended 93 per cent of the meetings of the Executive Committee and 92 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. McIntosh has attended 97 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors? A. That is correct.

[311]

Q. It shows, does it not, that Mr. John D. McKee has attended 88 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. C. O. G. Miller has attended 80 per cent of the meetings of the Executive Committee and 81 per cent of the meetings of the Board of Directors?

A. That is correct.

(Testimony of David Hiram Foote.)

Q. It shows, does it not, that Mr. Nichols has attended 90 per cent of the meetings of the Board of Directors? A. That is correct.

Q. It shows, does it not, that Mr. S. H. Palmer has attended 92 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors?

A. That is correct.

Q. It shows, does it not, that Mr. Wishon had attended 85 per cent of the meetings of the Executive Committee and 85 per cent of the meetings of the Board of Directors? A. That is correct.

Q. Mr. Wishon is also an officer who, while not a member of the Board of Directors, is by resolution invited to attend the meetings of the Executive Committee, is that right? [312]

A. That is correct, yes.

The Examiner: According to the legend at the bottom of the page you have accounted for all of the persons attending the meetings of the Executive Committee as either members of that committee or having been invited there by resolution except Mr. McIntosh.

The Witness: Well, Mr. McTosh was a member of the committee.

The Examiner: I see.

The Witness: At certain times when he took Mr. Anderson's place he was also a member of the —made a member of the Executive Committee and attended meetings as a member.

(Testimony of David Hiram Foote.)

The Examiner: I see.

The Witness: But since his last election as a director he has not been a member of the Executive Committee.

The Examiner: All right. Thank you.

Mr. Phleger: If the Examiner pleases, the list shows all of the present directors and their attendance at meetings of the Board of Directors and of the Executive Committee. Mr. McIntosh, although presently a director, is not now a member of the Executive Committee and, therefore, his attendance at meetings of the Executive Committee is for the period that he served as such a member.

The Examiner: I see.

Mr. Phleger: Exhibit 17 shows those periods.

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The Examiner: 16 shows as a director and 17 as a member of the Executive Committee.

Mr. Phleger: Yes. You will note that that membership in which he substituted for Mr. Anderson as a member of the Executive Committee ceased on the death of Mr. Anderson and Mr. Anderson's position was not thereafter filled.

The Examiner: Yes.

Mr. Phleger: I offer as Applicant's Exhibit 26 a statement prepared at the request of counsel for the Securities and Exchange Commission——

Mr. Gerdes (interposing): No.

Miss Calkin: I don't believe I asked for this.

(Testimony of David Hiram Foote.)

Mr. Phleger: Strike that out, please.

I offer as Applicant's Exhibit 26 a statement entitled "Pacific Gas and Electric Company stockholders' meetings".

The Examiner: This schedule or document consisting of two pages, if there is no objection, will be received in evidence and marked Applicant's Exhibit 26.

(The two-page document referred to above was marked Applicant's Exhibit No. 26 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, this exhibit was prepared under your direction and is true and correct, is it?

A. Yes, sir. [314]

Q. It shows the date, does it not, of each stockholders meeting, the number of shares present in person or by proxy, the percentage of outstanding stock so represented, the names of the persons holding the proxies and the number of notices sent to the stockholders? A. That is correct.

Q. I direct your attention to the fact that there is some variation in the percentage of stock represented at various stockholders meetings. Is it true that the attendance at the stockholders meetings is increased by sending out more than one notice?

A. Yes sir.

Q. Let me direct your attention to the two meetings held in 1926, the April meeting in that year had 68 per cent of the stock represented. The

(Testimony of David Hiram Foote.)

meeting held in October of that year had 73 per cent of the stock represented.

Was the larger attendance at the second meeting due to sending out an additional notice?

A. I think so; undoubtedly so.

Q. Now, I call your attention to the fact that a similar situation appears with respect to the 1927 and the February 1928 meetings.

A. It does.

Q. There were but 64 per cent present at the 1927 meeting and 75.5 per cent present at the February 1928 meeting. [315]

What caused the additional attendance in the February 1928 meeting?

A. The additional notice, the additional requests that were sent out, the second requests or proxies.

Q. Do you know why a greater attendance was desired at the 1928 meeting?

A. Yes; there were certain amendments, I think, to our articles of incorporation at which it was required that at least two-thirds should vote and the first notice didn't bring in that required percentage so we adjourned the meeting and sent out another notice.

Q. And has it been the uniform practice of the company wherever a specified number of shares were required for corporate purposes to send out additional notices if the first meeting was not attended by the requisite number?

A. Yes, that is a fact.

(Testimony of David Hiram Foote.)

Q. Now, I direct your attention to the meeting held on April 14, 1931, at which 70 per cent of the stock was represented. Had you sent out additional notices there?

A. Yes. We sent additional notices to stockholders holding large—a thousand shares or over.

Q. Now, the 77.5 per cent attendance on June 2, 1931 was the result similarly of sending out notices?

A. Yes.

Q. Do you recall whether or not some particular [316] percentage was required? A. I do.

Q. At that meeting?

A. I do. At that meeting there was some corporate action required that required at least two-thirds of each class of stock, and while we had proxies for over two-thirds of the total amount we had to send out additional requests because we didn't have the required percentages in each class so that raised the percentage to 77 per cent in order to get that.

Q. Yes. Now, I direct your attention to the column headed "Persons holding proxies". The persons named there were the persons named on the printed forms which were sent out to the stockholders with the notice of meetings, were they not?

A. Yes, they were.

Q. It is the custom of the company, is it, to send out requests for proxies?

A. It has always been the custom.

Q. And those proxies have printed in them the names of certain of the company's officers?

(Testimony of David Hiram Foote.)

A. Always, yes sir.

Q. That runs back how many years?

A. Oh, ever since the company was formed.

Q. That has been a practice for 35 years? [317]

A. Yes sir.

Q. It has been a uniform practice?

A. Uniform practice, yes sir.

Q. I call your attention to the fact that in 1925 the names in the proxies were W. E. Creed, F. J. Leach, Jr., and A. F. Hockenbeamer. What positions did those men hold with the company at that time?

A. Mr. Creed was president, Frank Leach was vice-president and general manager, and Mr. Hockenbeamer was treasurer, vice-president and treasurer.

Q. Now, those individuals continued, or rather, officers continued to be the persons named as proxies until the February 13, 1928 meeting?

A. Yes sir.

Q. At which time Mr. Hockenbeamer, Mr. Leach and yourself were named as proxies?

A. Yes sir.

Q. What positions did those individuals hold at that time?

A. Well, Mr. Hockenbeamer was president; Mr. Leach was still vice-president and general manager, and I had been made treasurer.

Q. You had succeeded Mr. Hockenbeamer as treasurer? A. Yes sir.

(Testimony of David Hiram Foote.)

Q. And was it by virtue of your position as treasurer [318] that you were named to that proxy?

A. Never exactly so stated, but the president fixed those names and they were printed that way.

Q. That has been the custom?

A. That has been the custom, yes.

Q. And there was no change, then, in the persons named as proxies until the meeting of April 14, 1936, was there?

A. Well, yes, there was. At a meeting of April 1930 there was a change; Mr. Downing took Mr. Leach's place.

Q. Oh. You are correct. When Mr. Downing succeeded Mr. Leach as vice-president and general manager he took Mr. Leach's place on the proxy?

A. Yes, that is right.

Q. Now, the next change came in 1936 when Mr. Black took Mr. Hockenbeamer's place?

A. Yes, that is right.

Q. That was by virtue of his being president?

A. That is right.

Q. And that is the situation which obtains up to the present time, is it not? A. Yes sir.

Q. Now, during all of this entire period and during all of your knowledge of company affairs, is it not a fact that the persons who at the time occupied the position of [319] president, vice-president and general manager and treasurer, were named in the proxy?

(Testimony of David Hiram Foote.)

A. Yes. Prior to this time there was one meeting at which I was named only as a representative, as secretary.

Q. That was only at one meeting?

A. That was only at one meeting. I have forgotten what meeting it was, many years ago when I was first elected as secretary. Mr. Drum, who was president at the time, said to send the proxies out that way and they were sent out that way.

Q. But with the exception of that time the persons names in the proxies sent out by the company have always been those who occupied the respective offices of president, vice-president and general manager, and treasurer? A. Yes.

The Examiner: The names of these persons thus appearing on the solicitation for proxies are those constituting what has been referred to here as the Proxy Committee?

The Witness: Proxy Committee. I wouldn't exactly call that a committee——

The Examiner (interposing): I am not sure that you used that term. The term was used. I was wondering if you knew.

The Witness: No, we don't—we just call them proxies.

The Examiner: All right. We will have a noon recess [320] at this time until 2 o'clock.

(Whereupon at 12:10 p.m. a recess was taken until 2:00 o'clock p.m. of the same day.) [321]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume whenever you are ready, Mr. Phleger.

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

Mr. Phleger: I will offer in evidence, as Applicant's Exhibit No. 27, the By-Laws of the Pacific Gas and Electric Company.

This is also produced at the request of the counsel for the Securities and Exchange Commission.

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 27.

(The By-Laws above referred to were marked Applicant's Exhibit No. 27 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, is this Exhibit a full, true and correct copy of the by-laws of the Pacific Gas and Electric Company?

A. I presume it is. I haven't read it word for word, but I would say it was without question.

I notice one amendment here that I know about that is [322] in the by-laws.

(Testimony of David Hiram Foote.)

Q. What is that?

A. That is in Article IV, where the Executive Committee was changed from 4 to 5 directors, and it has a printed 5 there and I remember that being in the present code.

I don't think there is any doubt but what this is a full, true and correct copy of the by-laws.

Mr. Phleger: Article I, Section 2 of these by-laws reads as follows:

"At the annual meeting of the stockholders, members of the Board of Directors for the ensuing year shall be elected by ballot in the manner prescribed in Section three hundred and seven (307) of the Civil Code of the State of California, as it exists on January 2, 1906, to serve for one year and until the election of their successors."

I now offer in evidence, as Applicant's Exhibit 28, a copy of Section 307 of the Civil Code of the State of California as it existed on January 2, 1906.

I take it, Miss Calkin, you will agree to that, subject to verification?

Miss Calkin: I have no objection.

Mr. Phleger: This is a copy of the statute as it existed at that time.

Miss Calkin: Yes.

The Examiner: It will be received in evidence and marked [323] Applicant's Exhibit No. 28.

(The Civil Code above referred to was marked Applicant's Exhibit No. 28 and received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: I notice the memorandum also includes a typewritten copy of that Section of the by-laws that you have just read.

Mr. Phleger: Yes; which is now in evidence.

The Examiner: That is already in evidence. You only really intend to offer the first page?

Mr. Phleger: I intend to offer the two to show the relationship and show why it was introduced. I will direct the Examiner's attention to the fact that this Section provides for cumulative voting.

By Mr. Phleger:

Q. Mr. Foote, does the preferred and common stock, or do the preferred and common shares of stock of the company have voting powers?

A. Yes, they do.

Q. On what basis? A. Equal basis.

Q. That is one——

A. (interposing) One vote for each share.

Q. One vote of the preferred stock—one share of preferred stock has a vote?

A. The same as the common, yes, one vote each.

[324]

Q. That is the way in which the shares of preferred and common stock have been represented and voted in the past? A. Always that way.

Q. And at the present time?

A. Yes. The old shares of $100 par value have now 4 votes because they are the equivalent of four $25 shares.

Q. That change took place many years ago?

(Testimony of David Hiram Foote.)

A. Yes, that change of the par value.

Mr. Bosley: In 1926, I think it was.

The Witness: In 1926, was it?

Mr. Bosley: In the month of December, 1926.

Mr. Phleger: Yes. For the benefit of the record I will state that in the exhibit, consisting of the original articles of incorporation, the amendment of December 31, 1926, reduced the par value of all shares of outstanding stock to $25 per share, both for the preferred and for the common stock.

By Mr. Phleger:

Q. It is a fact, Mr. Foote, that since that date, December 31, 1926, that each share of stock of $25 par value has had one vote?

A. One vote for each share. There are quite a number of certificates outstanding of the $100 par value stock, but that has the equivalent of four shares.

Q. That is, people have simply neglected to bring in their old certificates? [325] A. Yes.

Q. But when those shares are voted they are voted on a $25 par value basis?

A. That is the idea.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 29, a statement entitled "Pacific Gas and Electric Company Stockholders Located in Company Divisions as of August 1, 1940."

The Examiner: It will be received in evidence and marked Applicant's Exhibit No. 29.

(Testimony of David Hiram Foote.)

(The statement above referred to was marked Applicant's Exhibit No. 29 and received in evidence.)

Miss Calkin: I would like to ask Mr. Phleger whether Section 307 of the Civil Code of the State of California is still the law of the State.

Mr. Phleger: Section 307 has been amended and is not in its present form, but has been in substance enacted into another Section; but cumulative voting does exist in California at the present time.

Miss Calkin: That is applicable to all corporations?

Mr. Phleger: Applicable to all corporations, unless the articles or by-laws otherwise specifically provide. In fact, I would like to verify that. It applies cumulative voting to all California corporations. It does not apply to foreign corporations qualified to do business in this State if their articles or by-laws otherwise provide.

The Examiner: Does it also provide that the California [326] corporations may provide otherwise by its articles?

Mr. Phleger: It may, since the amendments of 1932—is it?

The Examiner: 1933.

Mr. Phleger: Yes, 1933—but certainly as to this corporation there is no doubt that the requirement of cumulative, or the privilege of cumulative voting applies. Is that not so, Mr. Bosley?

(Testimony of David Hiram Foote.)

Mr. Bosley: That is correct. In the 1931 session of the State Legislature a new general corporation law was adopted by the Legislature which superseded the general corporation law embodied in the Civil Code. This was given Civil Code numbers. It follows in the main the older provision, but made many changes. Prior to that time all corporation stock was required to have equal voting rights, and there was a provision for cumulative voting at elections of directors.

The 1931 statute, among other things, authorized a classification of shares and the making of provision for giving some shares only restricted or qualified voting rights; although there is a provision in there that for certain purposes all stock, whether it has the rights of voting generally at shareholders' meetings, must be allowed to vote. That deals with the question of disposing of all of the corporate assets, making amendments, and certain other fundamental proceedings.

But the present law does provide that the shares shall [327] have equal voting rights, one vote for each share of all the stock that has voting power, and it does provide for the cumulative voting at election of directors.

The articles of incorporation of this company have been introduced in evidence. Its by-laws are now offered in evidence. There is nothing in the articles or in the by-laws to in any way limit or qualify or restrict the right of stockholders to vote at

(Testimony of David Hiram Foote.)

all shareholders' meetings, one vote for each share, and at the election of directors they may cumulate votes, that is, each shareholder will have as many votes as he has shares of stock multiplied by the number of directors to be elected. If there are 15 directors to be elected, and a man who has 100 shares he would have 1500 votes and he can cast them all for one candidate or split it up among the entire 15, or among any number in between there.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 30, a statement headed "Pacific Gas and Electric Company Summary Showing the Holdings of North American Company and its Subsidiaries for June 1930 to July 1940."

The Examiner: In the absence of objection the schedule will be received in evidence and marked Applicant's Exhibit No. 30.

(The statement above referred to was marked Applicant's Exhibit No. 30 and was received in evidence.) [328]

Mr. Phleger: Before I proceed with No. 30 I will ask the witness some questions about Exhibit No. 29.

By Mr. Phleger:

Q. Mr. Foote, Exhibit 29 was prepared under your direction and is true and correct, is it?

A. Yes, it is.

Q. It shows the holdings of stock by divisions. Those divisions are the divisions shown in Applicant's Exhibit No. 10.

(Testimony of David Hiram Foote.)

A. Yes. The different operating divisions of the company.

Q. I show you Exhibit 10. A. Yes.

Q. I direct your attention to the fact that that exhibit shows the percentage of preferred and common stock held by residents of California. It shows, does it not, that 71.5 percent of the preferred stock of the company is owned by residents of California?

A. Yes.

Q. And that only 28.5 percent of the preferred stock is held by persons not residents in California?

A. That is right.

Q. And it shows, does it not, that 27.6 percent of the common shares are held in California and 72.4 percent are held by non-residents of California? [329] A. Yes, sir.

Q. And it shows further, does it not, that of the total shares outstanding 47.9 percent are held by residents of California and 52.1 percent are held by non-residents? A. That is right.

The Examiner: Mr. Foote, these figures, I presume, were taken from the stock record books of the company?

The Witness: Yes.

The Examiner: These computations are based upon those figures?

The Witness: Yes; that is right.

By Mr. Phleger:

Q. I call your attention, Mr. Foote, to Applicant's Exhibit No. 26, showing the data of attend-

(Testimony of David Hiram Foote.)

ance at stockholders' meetings from 1925 to date.

A. Yes.

Q. On that Exhibit it is shown that at the meeting on April 14, 1931 there was an attendance of 70 percent, is that correct?

A. That is right; yes.

Q. An adjourned meeting was held on June 2 of the same year, a second notice having been sent out between the first meeting and the second meeting, is that correct? A. That is right.

Q. At the second meeting there was present 79 percent [330] of the common shares? A. Yes.

Q. 77 percent of the 6 percent First Preferred?

A. Yes.

Q. And 68 percent of the 5½ Percent Preferred? A. Yes.

Q. Now, from that data can you state whether the additional attendance at the second meeting, which resulted from the second notice, was made up largely of preferred stockholders?

A. Yes, I think it was. As I recollect it was made up of stockholders who had exchanged their subsidiary company stock for preferred stock of the Pacific Gas and Electric Company.

Q. Now, from your experience in connection with stockholders' meetings, and the sending out of notices, is it your belief that it would be possible at any time, by sending out an additional notice, to obtain an attendance at stockholders' meetings of approximately 75 percent?

(Testimony of David Hiram Foote.)

A. Yes, I think so, without question.

Q. In your opinion there would be no difficulty in doing it? A. I think not.

Q. Has the company ever, in the last ten years, solicited proxies for attendance at stockholders' meetings, other [331] than by the ordinary notice through the mails? A. No.

Q. And it has never sent out more than two notices for any meeting? A. I think not.

Q. And it has never sent out any more than one notice for a meeting except as indicated on Exhibit 26?

A. That is right; I believe that is right.

Q. I now call your attention to Exhibit 30, showing the holding of North American and its known subsidiaries from 1930 to 1940. Was it prepared under your direction and is it true and correct?

A. Yes, it was and it is.

Q. I call your attention to the fact that the known subsidiaries of North American, as shown on the Exhibit, include Western Power Corporation, Noxid & Company, and Nunn & Company. Those are all of the subsidiaries and affiliated corporations you know of, are they not?

A. Yes, sir.

Q. The number of shares held by directors include shares held by nominees of that company?

A. Yes, sir; that is right.

Q. And the shares held from 1935 on are the shares held by Mr. Freeman and Mr. Fogarty, are they not? A. Yes, they are. [332]

(Testimony of David Hiram Foote.)

Q. Now, if you will turn to the total number of shares outstanding, as shown on this list, you will note that between May 31, 1930, when 7,325,268 were outstanding, and November 12, 1930, there was a substantial increase in the number of outstanding shares. Do you know what brought about that increase?

A. I think several reasons. We offered stock rights, common stock rights, and then there were exchanges of preferred stock for stock of underlying companies, I think. Isn't that right? No, I guess there were no common stock rights offered after 1930. Well, there must have been because——

Mr. Phleger (interposing): Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Is it not a fact, Mr. Foote, that during that period the increase in the number of common shares outstanding resulted from an offer of common stocks to the existing stockholders?

A. Yes, that is right.

Mr. Bosley: Off the record for a moment.

The Examiner: Just a moment. That period that you referred to, Mr. Phleger, is between May 31, 1930 to June 12, 1930? [333]

Mr. Phleger: Yes.

Mr. Bosley: Off the record.

(Testimony of David Hiram Foote.)

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

By Mr. Phleger:

Q. Mr. Foote, the maximum percent of the total voting stock of the Pacific Gas and Electric Company held by the North American Company and its subsidiaries and nominees was 19.89 percent on May 31, 1930, was it not? A. Yes.

The Examiner: June 12, 1930, isn't it?

Mr. Phleger: Yes. June 12, 1930. That is correct.

The Witness: Yes.

By Mr. Phleger:

Q. And from that date down there has been a constant but slight decline in the percentage of voting stock held, is that not so?

A. That is true.

Q. So that as of July 31, 1940 the percentage of voting stock had declined from the maximum of 19.89 percent on June 12, 1930 to the present percentage of 17.71 percent?

A. Yes; that is right.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 31, a statement headed "Pacific Gas and Electric Company [334] Summary Showing Percentage of Each Class of Stock Represented at the Annual Meeting of Stockholders on April 9, 1940."

(Testimony of David Hiram Foote.)

The Examiner: It will be received and marked Applicant's Exhibit No. 31.

(The statement above referred to was marked Applicant's Exhibit No. 31 and received in evidence.)

By Mr.Phleger:

Q. Was Applicant's Exhibit 31 prepared under your direction and is it true and correct?

A. It was and it is.

Q. That shows, does it not, that at the stockholders' meeting on April 9, 1940, that there was a smaller representation of the preferred stock than there was of the common stock?

A. Yes, that is true.

Q. That is to say, that at that meeting 51.92 percent of the First Preferred stock 6 percent was represented and 53.59 percent of the First Preferred 5-½ percent stock was represented?

A. That is right.

Q. Whereas 71.50 percent of the common stock was represented? A. That is right.

Q. In your opinion, based upon your experience at stockholders' meetings over many years, would it be difficult [335] to obtain a substantially larger representation of preferred stockholders by sending out additional notices?

A. I think it would not be; I think it could be done very readily.

Mr. Phleger: I offer, as Applicant's Exhibit No. 32, a statement headed "Pacific Gas and Electric

(Testimony of David Hiram Foote.)

Company Table Showing Pacific Gas and Electric Company Stocks Owned by Directors and Their Families, and With Others with Whom Directors are Affiiliated, as of October 1, 1940."

By Mr. Phleger:

Q. Mr. Foote, was that Exhibit prepared under your direction? A. It was; yes.

Q. And it is true and correct?

A. I believe so; yes, sir.

Q. That is to say, all you are testifying to is that the name of the individuals shown as owning stock is correct as shown by the stock records?

A. That is right.

Q. You are not testifying as to whether or not the directors are, in fact, affiliated with the other interests shown on the statement?

A. That is right.

The Examiner: This schedule, consisting of five typewritten pages, will be received in evidence, in the absence [336] of objection and marked Applicant's Exhibit No. 32.

(The statement, consisting of five pages, above referred to was marked Applicant's Exhibit No. 32 and received in evidence.)

Mr. Phleger: I now offer, as Applicant's Exhibit No. 33, a bound volume marked on the cover "Reports Furnished Regularly to Directors of the Pacific Gas and Electric Company Who Are Officers of the North American Company."

(Testimony of David Hiram Foote.)

This was supplied in response to the request of counsel for the Securities and Exchange Commission.

The Examiner: This volume, consisting of a number of sheets, schedules, and reports, with a label on it as read by Mr. Phleger, will be received in evidence, without objection, as Applicant's Exhibit No. 33.

(The volume of schedules and reports above referred to was marked Applicant's Exhibit No. 33 and received in evidence.)

By Mr. Phleger:

Q. Mr. Foote, will you examine Exhibit No. 33 and state which of those documents, which it contains, are forwarded by you periodically to Mr. Fogarty, of the North American Company, who is a director of the Pacific Gas and Electric Company?

A. Well, this Cash Report, that is forwarded to him. That is included in the President's Report.

Q. The item marked "Cash Report, August 19, 1940" [337] I understand you to state——

A. (Interposing) Is included in the President's Report to the Executive Committee, and that Report is sent to Mr. Fogarty by me.

Q. If I understand it, it is a typical example of the type of Cash Report which is submitted by the President at each meeting of the Executive Committee? A. That is exactly right.

Q. And you, after the Executive Committee meeting, send a copy of it to Mr. Fogarty?

(Testimony of David Hiram Foote.)

A. I do; that is right.

Q. Now, the next document headed "Pacific Gas and Electric Company Expenditures Authorized Under G. M. Estimates for the Period from August 14 to August 20, 1940", is that a typical form of——

A. (Interposing) That is a typical form of the report submitted by the Vice-President and General Manager to the Executive Committee each week. They go over it item by item and approve it by resolution. I send a copy of that to Mr. Fogarty.

Q. You send a copy of this particular typical report to Mr. Fogarty after the Executive Committee meeting at which it has been first presented by the General Manager? A. Yes; and approved.

Q. Now, the next report headed "Pacific Gas and [338] Electric Company System Generating Report Progressive and Comparative by Week and 52-Week Periods", is a report——

A. (Interposing) That is submitted to the Executive Committee by the Vice-President and General Manager, and he reads off the salient features of it.

This is also sent to Mr. Fogarty after the meeting.

Q. You send this to Mr. Fogarty after the meeting?

A. Yes.

The same may be said of the System Precipitation Data, Precipitation and Snow Coverage, and

(Testimony of David Hiram Foote.)

that is also read by Mr. Downing to the Executive Committee, the salient features of it, and afterwards a copy of that is sent to Mr. Fogarty after the meeting.

This (indicating) is the natural gas, the output of the natural gas, and that is also submitted in the same way by the General Manager to the Executive Committee and, after each meeting, a copy of that is also sent to Mr. Fogarty.

Q. By you? A. By me.

This (indicating) is a list of new business connected during the week ending at the time of the meeting and compared with the same relative week a year ago. That is also submitted to the Executive Committee by Mr. Downing and a copy of that is sent to Mr. Fogarty after the meeting.

This (indicating) is a typical form of——

Q. (Interposing) The next statement headed "Executive [339] Committee Meeting—August 20, 1940," what is that?

A. That is a typical copy of the minutes. That is the copy of the minutes of that date, and it is typical of all of the minutes of the Committee.

That is also sent to Mr. Fogarty.

Q. You write up those minutes, do you not?

A. I do.

Q. And after you have written them up you send a copy to Mr. Fogarty?

A. Yes.

This (indicating) is a "Customer Statement" that

(Testimony of David Hiram Foote.)

is submitted periodically by Mr. Black in his report, weekly report to the Executive Committee, and that is also forwarded as a part of Mr. Black's report.

Q. Do you forward that to Mr. Fogarty?

A. Yes, I do.

This (indicating) is a "Customer Statement" that is also included in Mr. Black's report periodically and it goes forward to Mr. Fogarty.

Q. You forward it to Mr. Fogarty after the meeting?

A. After the meeting; yes.

This (indicating) is a statement that is included in Mr. Black's weekly statement to the Executive Committee. It is a statement of completed G. M. estimates showing the amounts expended on each, and the amounts estimated, and the Committee [340] then passes a resolution cancelling the amounts estimated which have not been expended in completing these jobs, and approving amounts expended in completing the jobs which exceed the estimates as originally approved by the Committee.

That is also forwarded to Mr. Fogarty after the meeting.

Q. That statement that you have referred to is headed "Pacific Gas and Electric Company Statement of Capital Expenditures for Executive Committee"? A. That is right.

The Examiner: That is followed by 22 numbered pages, all constituting the same report?

Mr. Phleger: That is correct.

(Testimony of David Hiram Foote.)

By Mr. Phleger:

Q. This next sheet entitled "Consolidated Income Statements", what is that?

A. That is submitted by Mr. Black to the Executive Committee periodically, but I do not forward copies of this to Mr. Fogarty.

The Examiner: This is the consolidated income statement?

The Witness: Yes.

The following sheets are not sent to Mr. Fogarty by me.

By Mr. Phleger:

Q. There are six?

A. They are also submitted to the Board of Directors by Mr. Black. [341]

Q. The six following sheets are headed respectively, "Pacific Gas and Electric Company and Subsidiary Companies, Operating Revenue and Expenses by Departments and Consolidation, Month of June 1940 Compared With 1939".

"Electric Department. Gross Operating Revenue Month of June 1940 Compared With Previous Year."

"Gas Department. Gross Operating Revenue Month of June 1940 Compared with Previous Year."

"Electric Department. Operating Expenses Month of June 1940 Compared With Previous Year."

"Gas Department. Operating Expenses Month of June 1940 Compared With Previous Year."

(Testimony of David Hiram Foote.)

"Electric Department. Number of Customers Month of June 1940 Compared With Previous Year."

"Gas Department. Number of Customers Month of June 1940 Compared With Previous Year."

And a sheet headed "Railway Department. Gross Operating Revenue and Expenses Month of June 1940 Compared With Previous Year."

The same as to the Water Department.

The same as to the Steam Department.

And "Statement of Purchased, Consigned and Interchange Power, Month of June 1940 and 1939."

"Statement of Natural Gas and Butane Liquid Purchased, Month of June 1940 and 1939." [342]

And then a "Summary".

Are all of those statements, which I have just read, submitted by Mr. Black, President of the company, to the directors' meetings?

A. Both the Executive Committee and the directors' meetings; yes, sir.

Q. And you do not forward them to Mr. Fogarty?

A. No, I do not forward those.

Q. The next statement is headed, "Pacific Gas and Electric Company and Subsidiary Companies, Balance Sheets and Income Statements, June 1940."

A. Yes. That is submitted by Mr. Black to the Executive Committee, and also to the Board of Directors just as soon as it is issued each month.

Q. Do you send that to Mr. Fogarty?

A. I do not send that to Mr. Fogarty.

(Testimony of David Hiram Foote.)

Q. The next statement is a copy headed "Regular Board Meeting—May 22, 1940". What is that?

A. That is a copy of the minutes of that meeting, of the meeting held on that date by the Board of Directors, and typical of the minutes kept for the Board, and copies of those minutes are forwarded by me to Mr. Fogarty each time we have a meeting, that is, within a few days afterwards.

Q. The statement headed "1940 E.E.I. Monthly Report [343] Form", do you know anything about that?

A. No, I do not. That is gotten up by the Edison Electric Institute.

Q. Now, Mr. Foote, with respect to all——

The Examiner: You don't know what this report is?

The Witness: No. That is not submitted to the Executive Committee.

The Examiner: Or to Mr. Fogarty?

The Witness: No.

Mr. Phleger: We will connect that up by another witness, these other documents.

The Examiner: All right.

By Mr. Phleger:

Q. Mr. Foote, with respect to all of the reports, minutes and other documents which you have testified that you send to Mr. Fogarty, is it a correct statement to say that none of those reports are forwarded until after the meetings at which they are presented to the Executive Committee or the Board of Directors?

(Testimony of David Hiram Foote.)

A. Yes; that is a correct statement. They are not sent until after those meetings have been adjourned.

Q. And each of them, or the contents of each of them have first been communicated to the members of the respective bodies?

A. That is right; yes. [344]

Q. Do you send copies of the same documents to Mr. Freeman?

A. No, I do not. I send copies to Mr. Fogarty, and a copy of my letter to Mr. Fogarty describing the enclosures is sent to Mr. Freeman under separate letterhead.

Q. For what purpose do you send that to Mr. Freeman?

A. Simply because he is a director of the company.

Q. Is it for the purpose of acquainting him with the fact that they are available to him through Mr. Fogarty? A. That is the idea.

Q. Mr. Foote, during the period that you have served as a director of the company have you ever hesitated to freely express your views on company matters? A. I have not.

Q. During that period has any one person at any time dominated the deliberations of either the Board of Directors or the Executive Committee?

A. No, sir.

Q. During that entire period have you ever heard it stated that the North American Company

(Testimony of David Hiram Foote.)

either favored or opposed any measure pending before the Board?

A. No, I never have.

Q. As a matter of fact, with the exception of the transaction in 1930, when the company purchased securities from the North American Company, and of the recent time when [345] this particular proceeding was discussed, have you ever heard the name of the North American Company mentioned in the directors' meetings?

A. I don't believe I ever have. I don't remember it and I think I would remember it if it had been mentioned.

Q. When did you first meet Mr. James B. Black, present President of the company?

A. I think about 1930.

Q. 1930?

A. I think so. When we took over those companies I think I was not acquainted with him before; if so, very casually.

Q. During the period from 1930, when you first became acquainted with Mr. Black until he became President in 1935, did you ever discuss with him company affairs? A. I think not; no.

Q. Have you any present recollection of ever having talked with him during that period?

A. Our conversations were very casual and I think we never had any talk about company affairs.

Q. Has anyone purporting to act for the North American ever requested you to take any action or

(Testimony of David Hiram Foote.)

to refrain from any action as an officer or director of the Pacific Gas and Electric Company?

A. No, sir. [346]

Q. Have you ever at any time or in any connection observed anything which would indicate to your mind that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company?

A. No, I don't think so; absolutely not. They have always been controlled from the very beginning of the company by the western contingent.

Q. You mean the people who live and resided in California?

A. Yes; in San Francisco and California.

Q. Have any meetings of the Board of Directors, or of the Executive Committee of the company, ever been held outside of San Francisco? A. None.

Q. Do you remember the occasion in 1935 when the Public Utility Act of 1935 was under consideration by Congress? A. Yes.

Q. Did the P. G. & E. ever communicate with its stockholders requesting or advising them with respect to the tendency of that measure and asking that they oppose it?

A. No; no communication was sent.

Q. Has the P. G. & E. ever taken any position in [347] opposition to that measure?

(Testimony of David Hiram Foote.)

A. I think not.

Q. You have never communicated with your stockholders on it? A. Never have.

Q. Has the company ever loaned any money to the North American Company? A. No.

Q. Has it ever borrowed any money from the North American Company? A. No; none.

Mr. Phleger: I think that is all.

The Examiner: Any cross examination, Miss Calkin?

Miss Calkin: Yes.

The Examiner: We can take a recess if you wish, first.

Miss Calkin: I suggest a short recess.

(Whereupon, a short recess was taken after which proceedings were resumed as follows:)

[348]

The Examiner: You may resume the hearing.

Have you any further direct examination?

Mr. Phleger: Yes. I would like to clear up a question which was asked by the Examiner with respect to Exhibit 21, that was whether or not there were any duplications as between the various classes of stock in estimating the total number of stockholders.

The Examiner: I think your explanation subject to verification cleared up the point I had. I didn't mean there was any duplication in the sense that they had more numbers than were legitimate. My thought was that if a single individual owned

(Testimony of David Hiram Foote.)

several classes of stock he would be counted as an owner of that class and therein might be duplicating as to the total number.

Mr. Phleger: That was as I understood your comment, and Mr. Foote has the actual amount of duplication. I thought it might be of some interest.

The Examiner: Oh, yes.

By Mr. Phleger:

Q. Mr. Foote, to what extent are there duplications of the kind mentioned by the Examiner?

A. In order to get a very exact record of those it would involve an amount of work we didn't have time to attend to.

The Examiner: I don't think it is sufficiently [349] material to be important.

The Witness: I tell you I have taken the matter up since leaving here this morning and the best estimate we can make is that there are about 17,100 duplications, but in the list of our stockholders we have about the same number of joint tenancies which are composed of at least two stockholders, each one, so that we thought that that one would offset the other. You see the idea?

Mr. Phleger: Yes.

The Witness: The number of stockholders would be about the same, the difference being that joint tenancies of two or more would make up the duplications just about the same amount, as near as we can estimate.

Mr. Phleger: That is all.

(Testimony of David Hiram Foote.)

Cross Examination

By Miss Calkin:

Q. Mr. Foote, on your direct examination you testified that the first common stock of the company was all retired by it due to the non-payment of the assessments that were made against that common stock. After it had become treasury stock what was done with that common stock? Was it reissued by the company?

A. It was reissued in various ways. Some of it was sold; a larger number of shares were issued to the holders of preferred stock in consideration of their releasing the [350] company of their claim for dividends on preferred stock that had not been paid. There were about three—a little over three years, as I recollect, after the fire the company had difficulties and didn't pay the dividend on its preferred stock, and along about 3½ years after the fire the Board of Directors offered the owners of preferred stock common stock in lieu of their dividends; that is to say, they offered it provided the preferred stockholders would release their rights to the dividends, and that was all taken up.

Q. Well, in the early days of the company was a considerable amount of its common stock issued as bonuses in connection with financings?

A. In connection with what?

Q. In connection with financing of the company?

A. Well, yes, quite a little of it. It was issued in

(Testimony of David Hiram Foote.)

connection—the company, after the fire, incurred an indebtedness of some—well, some eleven million dollars owed to various—for material and supplies, a large part of it for machinery, the General Electric Company and Westinghouse, all those people.

Well, Mr. Hockenbeamer and I went around to see those people and we settled many of those bills by delivering bonds of the California Gas & Electric Corporation and with those bonds we gave—offered shares of stock of the Pacific Gas and Electric Company common stock. [351]

Mr. Phleger: That was all prior to 1910, was it not?

The Witness: Oh, yes; oh, yes.

Mr. Phleger: And this fire you referred to took place in 1906?

The Witness: 1906. That all occurred about—let me see—1907, about 1908.

Mr. Phleger: May I interrupt.

The shares of stock that you now referred to were shares which had previously been issued?

The Witness: Yes.

Mr. Phleger: And had been bought back by the company through failure to pay the assessment?

The Witness: That is right.

By Miss Calkin:

Q. Do you know whether or not there was at that time or now is a provision in the California law to the effect that a company must receive the par value of securities for stock?

(Testimony of David Hiram Foote.)

A. I think there was no law at that time to that effect; I am quite sure there was not.

Q. You testified, I believe, that no copies of any minutes of the applicant were kept outside of the office of the applicant until recently. Did you have reference then to the copies of the minutes which are now maintained in the offices of North American Company? [352]

A. Well, no, they are not signed minutes. They are only carbon copies and they are not signed.

Mr. Phleger: Excuse me. I didn't understand him to so testify.

Miss Calkin: I believe that is what he said.

By Miss Calkin:

Q. Did you not say that you——

A. (interposing) What I meant to testify was that none of the records, none of the stock records or the minutes of the Pacific Gas and Electric Company were ever outside of the State of California.

Q. Well, I thought you said until recently.

A. Oh, no.

Q. That is the matter I wanted cleared up.

A. No, I didn't mean that, because I don't consider that those are exactly records. They are just simply copies on sheets of paper sent for their information.

Q. You consider the minutes kept by the North American Company in New York as a duplicate set of the minute books of your company?

A. No, absolutely not; I never signed them.

(Testimony of David Hiram Foote.)

Mr. Phleger: Well, Miss Calkin, he didn't testify that he sent them to the North American. He sends them to the directors of the Pacific Gas and Electric, the individuals who are directors of North American Company; isn't that [353] correct?

The Witness: That is right. That is exactly right.

The Examiner: I think that is the testimony with respect to who got the copies, but I think that Miss Calkin's recollection is the same as mine with respect that he did testify that until recently there were no records of the company elsewhere, and I suppose that is what he meant.

The Witness: There were no copies; I might say there were no copies then.

Mr. Phleger: My recollection may be at fault.

Miss Calkin: It is in yesterday's testimony. I don't have the time to check it.

The Witness: There were no copies of the minutes outside of California—we will say that—because they are not duplicate minutes. They are not signed by me as secretary. I don't sign them when I send them out.

Mr. Bosley: I suppose further you don't know what those New York directors do with those copies after they get them, do you?

The Witness: I have no idea.

The Examiner: You don't send copies to anyone other than these New York directors?

(Testimony of David Hiram Foote.)

The Witness: No, no, because the others are all in California and usually attend the meetings. We very often have a full Board with the exception of the two directors, [354] two New York directors.

By Miss Calkin:

Q. Do any officers of the North American Company or any of its representatives have any authority to check on the Applicant's bank accounts located in the City of New York? A. No, no.

Q. Who does have authority to check on those accounts?

A. On the—pardon me—will you repeat that question? Do any officers——

The Examiner: Read that question, please?

(The question referred to was read by the reporter as above recorded.)

The Witness: That is exactly right. I said "no" they do not.

The Examiner: By "checking", do you mean verifying and checking as to accuracy or the amount thereof or drawing checks?

Miss Calkin: I mean drawing checks.

The Witness: None whatever. They have nothing to do with our bank accounts, absolutely not.

By Miss Calkin:

Q. Who does have authority to check on those accounts?

A. The general officers of the company, any two, the president, vice-president and general manager,

(Testimony of David Hiram Foote.)

vice-president [355] and assistant to the president, secretary and treasurer, any two of those officers, and any one of those officers with certain assistant treasurers and assistant secretaries.

Q. Who, in your organization, has charge of the purchase of bonds to meet sinking fund requirements?

The Witness: I didn't get that.

(The question referred to was read by the reporter as above recorded.)

A. That has been delegated to—well, Mr. Beckett usually attends to it, the assistant treasurer. He is in the president's office and he consults with the president about purchasing bonds for sinking funds.

Q. Do you know whether or not Mr. Beckett confers with the representatives of the North American Company in reference to the purchase of bonds for sinking fund purposes?

A. I think not; to the best of my knowledge, no.

Q. I notice on referring to page 3 on the amended application, the Roman numeral three, this statement is made beginning on the bottom of page 2: "San Joaquin Light & Power Corporation is now in the process of winding up its affairs and has distributed to Pacific Gas and Electric Company all of its operating properties and other assets except a sum of money held in reserve for eventual distribution to certain minority common stockholders

(Testimony of David Hiram Foote.)

whose rights have not yet been judicially determined." [356]

Can you tell me, Mr. Foote, what determination of the rights of those minority common stockholders is being made? A. It is in——

Mr. Bosley (interposing): I think that is a question that had better be addressed to me.

The Witness: Well, it is in the court in Fresno. What I was going to say, it is in the course of litigation in the court in Fresno.

Miss Calkin: Well, can you, Mr. Bosley, make a statement concerning that?

Mr. Bosley: The minority common stockholders of San Joaquin Light & Power Corporation who own 353 shares of common stock of record of that company—three of those shares stand of record in the name of a person whom we have been unable to find, whose address or whereabouts have not been known over a number of years. The other 350 shares are owned by—well, 150 shares owned by a man who lives here in San Francisco, a hundred shares owned by a man who lives in Portland, and then there are two people who are represented by an attorney at Merced who, I believe, live in the vicinity of Merced or Madera who own 50 shares, two guardians for some minors, the Pacific Gas and Electric Company being the owner of all of the rest of the shares executed a written consent to the winding up and dissolution of the San Joaquin Light & Power Corporation. [357]

(Testimony of David Hiram Foote.)

It undertook to assume all of the outstanding obligations of San Joaquin Light & Power Corporation except such as might be paid by the San Joaquin Corporation itself during the period of winding up.

The San Joaquin Light & Power Corporation then, under the provisions of the general corporation law of this state, filed a petition in the Superior Court in Fresno County for the purpose of determining the rights of all classes of shareholders in respect to its assets.

The San Joaquin Light & Power Corporation Board of Directors ordered and the officers executed the conveyance of all of the operating properties of the San Joaquin Light & Power Corporation to Pacific Gas and Electric Company which, at the time owned, well, 99—something over 99½ per cent of all of the outstanding stock.

The holders of these 350 shares have contested the validity of the proceedings for winding up, and the method of distribution proposed by the majority stock holder. The method of distribution proposed by the majority stockholder, that is, the Pacific Gas and Electric Company, is that the operating properties, of which I should say that the current assets should be assigned to the Pacific Gas and Electric Company as an amount to be credited on the San Joaquin's indebtedness to the Applicant here, and that the physical properties should be distributed to the Pacific Gas and [358] Electric Company and that a proceeding should be instituted

(Testimony of David Hiram Foote.)

in court for the purpose of determining the fair value of the minority stockholders proportional shares of the distributable assets, that is, of the net assets distributable of the San Joaquin Light & Power Corporation.

Distribution was made on that basis, and the Pacific Gas and Electric Company assumed the payment of the outstanding bonds of the San Joaquin Light & Power Corporation, and the sum of $250,000 was deposited in a bank by the San Joaquin Light & Power Corporation to await the determination of the rights of the holders of these 350 shares, and also some of it was to be applied toward the payment of a final dividend.

There is now on deposit in that fund in a bank here in San Francisco a sum of—Mr. Foote may correct me—I think it is approximately $121,000.

The Witness: That is about right.

Mr. Bosley: To be used in paying to these minority stockholders the amount of money that the court may determine to be the fair value of these minority shares. The minority stockholders, as I say, are contesting it.

Miss Calkin: What is your best judgment as to when that litigation will be terminated?

Mr. Bosley: Oh, Lord knows. The minority stockholders presented demurrers to the petition and the court has ruled with them on that demurrer and I am waiting now to have a [359] judgment entered

(Testimony of David Hiram Foote.)

whereupon we will take an appeal to the higher courts.

Miss Calkin: What is the par value of the common stock?

Mr. Bosley: $100.

Miss Calkin: Well, how far apart is the company and the stockholders in the contention as to the value of the common stock?

Mr. Bosley: I can't say because certain of those stockholders have offered to surrender their stock for $200 per share. Others of the minority stockholders have declined to place any figure upon it.

Miss Calkin: Well, the proposition of the Applicant is to pay those stockholders in cash rather than to give them any part of the stock of the Applicant?

Mr. Bosley: Not the Applicant. The proposition of the San Joaquin Light & Power Corporation, which is pursuant to its agreement with the Applicant, is that in making distribution it will distribute to minority stockholders an amount of money in cash equal to the full value of their proportional shares of the distributable assets when that amount shall be determined. It looks like it will be another one, two or three years before the matter is determined unless we can reach an agreement with the minority stockholders. [360]

Miss Calkin: In the meantime the assets of the San Joaquin Light & Power Corporation have been distributed and the Applicant is operating its properties?

(Testimony of David Hiram Foote.)

Mr. Bo.dey: Yes, has been. The greater part was distributed on December 1, 1938. The remainder was distributed on November 22, 1939, and the reason for the delay until that time rose out of the necessity of obtaining the approval of the proposed transfer of certain Federal Power Commission Licenses by the Federal Power Commission.

By Miss Calkin:

Q. Mr. Foote, I notice according to Applicant's Exhibit No. 16, which is the directors' chart, that Mr. J. S. Drum was not re-elected on April 18, 1930. Can you tell me why Mr. Drum was not re-elected?

A. Well, I think he declined to serve; that is my recollection.

Q. And I also notice by that chart that Mr. Coghlan was elected on April 8th.

A. Mr. who?

Q. Mr. Coghlan. A. Oh, yes.

Q. Was elected on April 8, 1930, and resigned on June 18, 1930. A. Yes.

Q. Do you know the reason for Mr. Coghlan's [361] resignation as of that date?

A. I think it was to create a vacancy in order that another man could be elected.

Q. I notice also that Mr. Black was first elected as a director of the Applicant on June 18, 1930. Would you say that Mr. Coghlan resigned in order to provide a vacancy which might be filled by Mr. Black upon the completion of the transaction?

(Testimony of David Hiram Foote.)

A. Yes, that might have been, yes; that might have been the case. I can't say positively, though, that that was the case without looking at the records.

Q. I notice from the same exhibit that Mr. A. B. C. Dohrmann resigned on June 13, 1930, and that Mr. Guy C. Earl was elected a director on June 18, 1930. A. Yes sir.

Q. Who was Mr. Dohrmann? What interest did he represent?

A. He was—A. B. C. Dohrmann was a very prominent merchant in San Francisco, head of the Nathan Dohrmann concern, big merchants here, very wealthy merchants.

Q. Was he a stockholder of the Applicant?

A. Oh, yes, yes.

Q. Was his resignation requested in order to make available——

A. (Interposing) I couldn't tell you that. [362]

Q. (Continuing) —a vacancy which Mr. Earl might fill?

A. I really don't know that. All I know is the fact that he did resign and Mr. Earl was elected.

The Examiner: Had he disposed of his stock and interest at that time?

The Witness: I think not, no.

By Miss Calkin:

Q. Is Mr. Dohrmann still living?

A. No, he is dead; died some years ago.

Q. I also notice from that exhibit that Mr. Mc-

(Testimony of David Hiram Foote.)

Candless died on January 30, 1930, and that his position on the Board was taken by Mr. Charles L. Barrett. A. Yes.

Q. Who was elected on April 8, 1930 and resigned on June 18, 1930.

A. John McCandless died.

Q. And Mr. Barrett was elected to take his place on the Board and served from April 8, 1930 to June 18, 1930? A. Yes sir.

Q. At which time Mr. Edwin Gruhl was elected?

A. Yes sir.

Q. And served until his death on January 22, 1933? A. Yes sir.

Q. Who was Mr. Barrett? [363]

A. Mr. Barrett was—he was secretary of the San Francisco Gas & Electric Company, one of our subsidiary companies, and when we took them over he became assistant secretary of the Pacific Gas and Electric Company in my department. He was an older man.

Q. He was an employee of the Applicant?

A. Yes, that is right.

Q. And do you know whether or not he resigned in order to make available a vacancy?

A. I think so.

Q. Which might be filled by Mr. Gruhl?

A. I think so, yes. I think it was agreed that they were entitled, as stockholders, to two members of the Board and that was provided for in that way; that is my recollection.

(Testimony of David Hiram Foote.)

Q. They were entitled to two members on the Board of Directors? A. Two or three.

Mr. Bosley: Three members.

By Miss Calkin:

Q. How many members on the Executive Committee are provided for by the bylaws of the company?

A. Five members on the Board and president ex-officio, six members altogether. [364]

Q. Why are there now only five members?

A. Well, simply because the Board has not elected the sixth member; that is the only reason I know.

Q. Have you ever heard any discussions as to why the Executive Committee has been reduced from six to five persons?

A. No, I never have.

Q. Do you know whether or not the North American Company is entitled by virtue of an oral or written agreement with the Applicant to any representation on the Executive Committee?

A. I think not; not that I know of.

Q. Has it ever had any representation on the Executive Committee?

A. Well, I think that Mr. Earl represented them on the Committee.

Q. How frequently have you conferred with Mr. Fogarty or Mr. Freeman or Mr. Black prior to the time he became president concerning matters pertaining to the Applicant's affairs? A. Never.

(Testimony of David Hiram Foote.)

Q. Have you ever been in New York since 1930, Mr. Foote?

A. Well, I went to New York last year which was the first time I had been East since 1912. [365]

Q. And when you were in New York last year did you see Mr. Fogarty or Mr. Freeman?

A. I did not.

Q. Are you acquainted with those gentlemen?

A. Oh, yes, I have met them, but very casually.

Q. When did you meet Mr. Freeman?

A. Oh, Mr. Freeman, I don't know that I have ever met Mr. Freeman, to tell you the honest truth. I was thinking of Mr. Doolittle. I think I have never met Mr. Freeman. Mr. Fogarty I have met out West here. Mr. Fogarty has been in the office of the company, dropped into my office to say How do you do, and shake hands for a few minutes.

Q. Well, did you call on Mr. Fogarty at his office in New York when you were there last year?

A. I did not.

Q. Have you ever been in the offices of the North American Company in New York City?

A. Never have, never have been in the offices of the North American Company.

Q. You have never discussed the Applicant's business with Mr. Fogarty or Mr. Black or Mr. Doolittle?

A. Not prior to Mr. Black's election as president, no, and with the other two gentlemen none at all, never at any time.

(Testimony of David Hiram Foote.)

Q. Have you ever talked to any representative of the [366] North American Company over long distance telephone? A. No, I have not.

Q. I notice that Applicant's Exhibit 23 which shows the votes cast at the annual stockholders meetings for the years 1930 to 1940 discloses that there is no record of individual proxies for the years '32 and '33. Why is that the case?

A. Well, I was advised by counsel at that time it was not necessary to keep proxies.

Q. You mean you just destroyed the proxies?

A. We didn't keep them, just destroyed them.

Q. But since that time——

A. (interposing) Well, since that time there have been some regulations passed by the Federal Power Commission requiring us to retain certain records and among them are proxies, and so we have kept them from that time on.

Q. Are the by-laws which have been introduced in evidence as Applicant's Exhibit No. 27 the by-laws which are effective as of the present time?

A. They are, yes.

Q. They are revised and have all the——

A. (interposing) They have all the amendments in them.

Q. Has any stockholder ever exercised his right to vote his stock as prescribed in Section 307 of the Civil Code [367] of the State?

A. You mean accumulating?

Q. Yes. A. No, they never have.

(Testimony of David Hiram Foote.)

Q. That has never been done to your knowledge?

A. Never been done, no.

Q. Have you ever made any computation to determine how many directors the North American Company could elect if it exercised its cumulative voting rights?

A. Well, no, I have not. That would depend very largely upon the number of shares represented at the meeting, of course, and I have never made a computation of that.

Q. Well, I am not sure that I understand any too clearly how those rights are exercised. If North American owns at the present time about 2,059,000 of the shares of the Applicant, and there are 15 directors to be elected, in casting its vote could North American vote 15 times the number of shares held by it?

A. Yes, they could vote that. They could divide that among as many directors as they might choose.

Q. Every stockholder could do likewise?

A. Every stockholder could do likewise.

Q. So that every stockholder, if they all exercised their cumulating voting rights, would be voting their holdings times 15? [368]

A. Yes, yes, but, of course, they can't vote that for all the directors, you know.

Q. No, I understand that.

A. You understand that.

Q. I mean they could vote that——

(Testimony of David Hiram Foote.)

A. (interposing) They can divide it among 1, 2, 3 or 4, or whatever number of directors they may desire. They can't vote for the whole 15 directors and cumulate——

Q. (interposing) What constitutes a quorum for the transaction of business?

A. Regularly 50 per cent majority of the shares, just over 50.

Q. Have you ever made any computation to determine whether or not a quorum would have been present if North American had not voted its stock at the annual meetings held since 1930?

A. Yes, I think we could get a quorum without any difficulty.

Q. You say you could get one without any difficulty. I mean with the stock whose votes were in. Have you ever made any computation to determine whether or not North American stock was necessary in order that a quorum be present?

A. No, I never have. There has never been any contest. We have always——

Mr. Bosley (interposing): Might I make an interruption? [369] The record of the votes at the stockholders meetings gives you all that information.

Miss Calkin: Yes, I know.

Mr. Bosley: If there is only 52 per cent or 62 per cent of all the stock represented you take out 17 and a fraction per cent and there wouldn't be a majority left.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. So that in that event North American would be in a position to break quorum at any stockholders meeting, if it so desired?

A. But the meeting couldn't do anything.

Mr. Bosley: Unless the total vote or the total number of shares represented exceeds 67.71 percent; in other words, if they had 70 per cent or 75 per cent of all the shares present the holders of 17.17 might walk out and decline to vote. Still there would be a quorum.

By Miss Calkin:

Q. But if the holders of only 65 per cent of the stock were present, as I believe one of the exhibits shows has occurred on several occasions, if North American chose to break the quorum it could do so?

A. Yes.

Q. And no meeting could be held?

A. And no meeting could be held. The directors would then hold over because they are elected until their [370] successors are elected and qualified.

Q. Mr. Foote, what contacts do you have with the Vallejo Electric Light & Power Company?

A. Oh, none at all practically. They pay the dividends; get their dividends on their stock; that is the only contact I have.

Q. You do not advise with them concerning corporate matters? A. Not at all.

Q. And do not assist them in keeping their minute books and their corporate records?

(Testimony of David Hiram Foote.)

A. Not at all.

Q. Have you ever discussed the operating policies of Vallejo Electric Light & Power Company?

A. Oh, no, not at all.

Q. With representatives of that company?

A. No, not at all, not at all.

Q. Did you participate in the negotiations culminating in Applicant's acquisition of the subsidiaries of Western Power Corporation?

A. No, I did not.

Q. Who carried on those negotiations, if you know? A. Mr. Hockenbeamer.

Q. With whom did he carry them on, if you know?

A. I think he went to New York and carried them on [371] in New York very largely.

Q. Do you know whether or not Mr. Black was in California in connection with those negotiations at any time?

A. No, I can't—I don't know that.

Mr. Bosley: Pardon me. I am not sure to what you are referring; what negotiations?

Miss Calkin: The negotiations leading up to the——

Mr. Bosley (interposing): The purchase of the stock?

Miss Calkin: The Applicant's acquisition of the securities of Western Power Corporation.

Mr. Bosley: That is all right.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Was anyone in Applicant's organization active in carrying on those negotiations, to your knowledge, other than Mr. Hockenbeamer?

A. No, I think not, although I know that he talked with me about it occasionally, and I know he consulted other members of the Board of Directors. Mr. Hockenbeamer and I were very intimate friends.

Q. But you think that he was spokesman for the Applicant so far as its dealings with the North American people were concerned? A. Yes.

Q. Do you know who first proposed that the Applicant [372] acquire these properties, whether the proposal came from North American or from the Applicant? A. No, I do not.

Q. When did you first hear of the proposed acquisition?

A. I think shortly before it occurred, within six months before it occurred.

Q. Did you consider the acquisition advantageous to the Applicant? A. Yes, I did.

Q. For what reasons?

A. Well, one of the reasons was the operating facilities, many of their lines parallelled ours making it unnecessary expenditure of capital and, of course, they had to have a double force of meter readers and a double force of bookkeepers and all that sort of thing. The economies were quite evident in consolidating the system because they operated in some of the same territory that we did. Then,

(Testimony of David Hiram Foote.)

in addition to that I learned—I heard it stated from the engineers that their facilities, that their hydro-electric facilities would work in very beautifully with ours, economically, that we could utilize their hydro-electric facilities along with ours, and in a very economic management.

Q. Are you acquainted with Lake Almanor?

A. No, I am not; I have never been there. [373]

Q. Well, you have heard of the lake?

A. Oh, yes, Lake Almanor.

Q. Who owned that property prior to 1930?

A. Oh, I think the Great Western Power Company of California.

Q. Was that considered a valuable asset to a utility company? A. Yes, it was.

Q. Did you ever hear anyone say whether or not the Applicant desired to acquire—I mean, that that was one of the factors motivating the Applicant in its desire to acquire the properties?

A. Yes, that was one of the arguments in favor of it, yes.

Q. You were a member of Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. We what?

Q. You were a member of Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. Yes, yes.

(Testimony of David Hiram Foote.)

Q. Do you recall whether or not that company, that is, Standard Gas & Electric Company, was required to give [374] a written assurance as to its participation in Applicant's affairs and disposal of its stock? A. No.

Q. You have no knowledge of any such written agreement? A. No, no.

Q. Do you know whether or not North American was requested to give any assurance as to the extent of its participation in the affairs of the Applicant?

A. I think not; I think nothing of the sort was done; I never heard of it.

The Examiner: What was the answer?

(The answer referred to was read by the reporter as above recorded.)

By Miss Calkin:

Q. Did you participate in or overhear any discussion during the negotiations preceding the acquisition of the securities of Western Power Corporation concerning the extent to which it was contemplated North American might thereafter participate in any of the Applicant's affairs?

A. I think there was no discussion of that. It was generally understood that they would not participate, however, I know that.

Q. What did that understanding arise out of? Who acquainted you with it? [375]

A. As far as I am concerned it was simply what I heard other directors speak of; Mr. Hockenbeamer.

(Testimony of David Hiram Foote.)

Q. Where was that discussion? At Board meetings?

A. No, I think private conversation with me, probably.

Q. You mean between you and Mr. Hockenbeamer? A. Yes, yes.

Q. What is your best recollection as to what Mr. Hockenbeamer told you in regard to that matter?

A. Well, I know his understanding was that there would be no participation in the affairs of the Pacific Gas and Electric Company by the North American Company by reason of their acquiring any stock, although it was common sense that if they acquired a large block of stock they would be entitled to representation on the Board of Directors.

Q. Were any other of your large stockholders then or are they now represented on your Board?

A. Standard—the Standard Company that you just spoke of had representation on our Board at one time.

Q. That was Mr. John J. O'Brien?

A. Yes sir.

Q. Is that company now represented on your Board? A. No, they are not.

Q. Have they ever sought representation and been refused? [376] A. Not to my knowledge.

Q. Are any other large stockholders other than North American and Standard represented on your Board?

(Testimony of David Hiram Foote.)

A. No—well, only in a general way; I think no particular group.

Q. Has the Sun Life Assurance Company, to your knowledge, ever requested representation on the Board? A. No, they have not.

Q. And it has never been represented?

A. No.

Q. Do you consider Mr. Miller a representative of the Pacific Lighting Corporation—is that the name?

Mr. Gerdes: Yes.

A. No, not on our Board of Directors. Mr. Miller is considered to be a very valuable member on the Board. He is one of the oldest utility men in California and his advice and opinions would be highly valued by the members of the Board of Directors; I know that; I know they all would value them.

Q. Prior to the consummation of the transaction by which North American or its subsidiary, Western Power Corporation, acquired a large block of the Applicant's stock, did you ever hear any of the directors say that they were apprehensive, or say that in substance, as to North American's possible domination of the Applicant in the [377] future? A. No, I never did.

Q. Was that a matter which, as you now recall, was given no particular consideration at that time?

A. It was not, no. I don't remember any talk about it in Board meetings.

(Testimony of David Hiram Foote.)

Q. Did you have any discussions with Mr. Black concerning the acquisition of these securities prior to the time the deal was consummated?

A. No, I did not.

Q. There was an understanding, was there not, Mr. Foote, that when North American acquired the securities of Western Power Corporation's subsidiaries that it would be entitled to representation upon Applicant's Board, and upon its Executive Committee?

A. I believe there was some oral agreement or oral statement, but I have no personal knowledge of it.

Q. Do you know who entered into that agreement on behalf of the parties?

A. I think Mr. Hockenbeamer, but I don't think there was any agreement. I think it was just friendly talk on the subject.

Q. Well, did Mr. Hockenbeamer acquaint the Board with that understanding? [378]

A. Not in my presence.

Q. When did you first learn of it?

A. Well, you mean that there was such an agreement?

Q. Yes.

A. Well, I think Mr. Hockenbeamer told me himself that they wouldn't—that North American Company would take no action but, of course, they would be entitled to a few directors, something of that sort very casually.

(Testimony of David Hiram Foote.)

Q. And you do not know whether or not all members of the Board were familiar with that arrangement at the time it was made?

A. No, I do not know that.

Q. Was the agreement, as I understand it—is my understanding correct that North American was to be entitled to three representatives on your Board?

A. Well, I don't know where I got the idea, but I did have that idea that that was agreed to.

Q. North American at present has only two representatives on your Board? A. Yes, yes.

Q. Does it not? A. Yes.

Q. Can you name the directors of the Applicant who have been representatives of the North American Company on your Board? [379]

A. Well, Mr. Black before was a representative of the North American Company, and Mr. Earl, Guy Earl, and also the—well, there was Mr. Doolittle, Mr. Dame, Mr. Gruhl and the present directors, Mr. Freeman and Mr. Fogarty.

Mr. Bosley: The periods of their incumbency is all shown in this exhibit, is it not?

The Witness: Yes.

By Miss Calkin:

Q. Now, the individuals that you have named constitute the only representation on your Board had at any period by North American Company?

A. Yes, that is right.

(Testimony of David Hiram Foote.)

Q. And Mr. Gruhl, do you know what position he occupied with the North American Company during the time he was director of the Applicant?

A. I think he was president, wasn't he?

Q. What about Mr. Dame?

A. I think he was president also.

Q. What about Mr. Doolittle?

A. Mr. Doolittle was vice-president, I understand.

Q. And Mr. Black?

A. Mr. Black, I think, also was a vice-president.

Q. Mr. Freeman?

A. Mr. Freeman, I think, a vice-president.

Q. And Mr. Fogarty? [380]

A. Mr. Fogarty was president or chairman of the Board; I don't know which.

Q. Do you know what Mr. Fogarty's present position with North American Company is?

A. I think it is president, isn't it? I don't really know positively. I believe it is president.

Q. Do you know why North American now has only, and has had since, I believe, the early part of '36 only two representatives on your Board of Directors?

A. I think there is no particular reason, just simply they don't seem to care, don't seem to want it. In other words, I think they are satisfied with the management of the company out West.

Q. Did you ever know whether or not anyone from your organization communicated with North

(Testimony of David Hiram Foote.)

American and asked them to have only two representatives on the Board so that Mr. Palmer might be elected?

A. I think not. I think there was no such request made. I never heard of it.

Q. Has anyone representing North American ever indicated to you that its representation on the Board was not as important since Mr. Black has been president of the Applicant as such representation was during Mr. Hockenbeamer's lifetime?

A. No.

Q. Do you consider Mr. Black as a representative [381] of North American on the Applicant's Board? A. Absolutely not.

Q. And have you ever considered him as such a representative?

A. Not since his election as president.

Q. Do you know why Mr. Palmer was placed on your Board? A. Why who?

Q. Why Mr. Palmer was elected to your Board?

A. Well, because he was a prominent business man in San Francisco, thought to be a valuable—thought his ideas and his opinions might be valuable in connection with the operation of the company.

Q. Can you describe the routine procedure for the election of the members of the Proxy Committee, or what you speak of as "proxies" and the making out of notices and so forth, Mr. Foote?

(Testimony of David Hiram Foote.)

A. There is no formality about it. About the time it is necessary to ask for proxies in order to have an annual meeting I generally go up and see the president and ask him whether he wants—whether he suggests any change, or should there be any change, and he says "no, the same, just follow the same procedure as you did last year", and that is all there is to it.

Q. Well, now, does the Board aprpove the Proxy [382] Committee?

A. Not formally, although the last few years——

Q. (interposing) Does it approxe the form of the proxy notice? A. Pardon?

Q. Does it approve the form of the proxy notice?

A. No, but it does approve—you know, in the last few years there has been a regulation by, I think, the Securities and Exchange Commission regarding a proxy statement that has to accompany a request for proxies. Now, the Executive Committee or Board has always approved that proxy statement that is sent out. Prior to that regulation we didn't send any such statement.

Q. Well, the members that are to compose the Proxy Committee which have always, I believe your testimony shows, been the president, the general manager and yourself——

A. And the treasurer.

Q. And the treasurer—— A. Yes sir.

(Testimony of David Hiram Foote.)

Q. You say the president has selected those persons? A. Yes, yes.

Q. And then you have had their names placed on the proxy? A. Yes. [383]

Q. That has been sent out?

A. I have them printed; it is all done in my office.

Q. That is sent out by the office here?

A. It is sent out by office, yes.

Q. Where are those proxies returnable?

A. The bylaws of the company provide that proxies from stockholders shall be filed with the secretary of the company so that the proxy—the envelopes are addressed to the secretary in accordance with our bylaws.

Q. There are stamped, self-addressed envelopes sent out with the proxies?

A. Yes; we stamp—sometimes we do and sometimes we haven't. There is two ways of doing it, you know. You can pay for the enclosure after it is received, or you can put stamps, and it costs a little more to pay for it upon receipt, but it amounts to about the same thing. We have generally followed the plan that would cost us the least in postage.

Q. And the directors do not approve the notice of the annual stockholders meeting or the proxy committee? A. No.

Q. That isn't handled by the directors at all?

A. The bylaws require no notice. We don't have to give a notice of annual meetings at all. The proxy

(Testimony of David Hiram Foote.)

statement that is sent out is prepared under regulation of the Security [384] and Exchange Commission, I believe.

Q. And the recommendations of the president as to whom the proxies shall be, as made to you, have always been followed? A. Yes sir.

Q. During your period of office?

A. Yes, yes.

The Examiner: Is it the Board or the Executive Committee that approves this proxy statement that is now required?

The Witness: I think it is usually the Executive Committee because they meet every week. The Board meetings are not so frequent, and the Executive Committee approves it.

By Miss Calkin:

Q. Well, now, the proxy statement under the present rules and regulations of the Securities and Exchange Commission must state the names of the directors whom the proxies intend to cast their votes for? A. Yes.

Q. Now, who makes up that slate of directors?

A. Why, the directors—well, it has been the incumbent directors in every case.

Q. And the directors, in approving the proxy statement, approve their insertion of their names in that proxy statement? A. Yes, correct.

Q. At whose suggestion do you first put those names [385] in the proxy statement?

(Testimony of David Hiram Foote.)

A. Why, I think at the suggestion of the president and it would be with the—I know that it is with the consent of the Executive Committee. They are always in perfect accord in those things.

Q. Well, is the proxy statement in a printed and final form at the time it is approved by the directors? A. Yes, it is.

Q. And the names of the——

A. (interposing) The names and number of shares held by each in accordance with those regulations is all stated in there.

Q. Does Mr. Black advise you as to who North American's nominees for directors for the ensuing year will be?

A. The president, yes, I think, has always advised me that.

Q. During Mr. Black's presidency Mr. Freeman and Mr. Fogarty have been the only representatives on your Board? A. Yes.

Q. From North American? A. Yes.

Q. And their names have been included in this slate at Mr. Black's instructions? A. Yes.

Q. Has he ever told you who has advised him or how [386] he has been advised as to who North American wants on its Board, for representation on the Board? A. No, he has not.

Q. Who, in your opinion, Mr. Foote, other than employees of the Applicant, have been the most active directors on your Board?

(Testimony of David Hiram Foote.)

A. Oh, there has been a number of them; Mr. Miller, Mr. Elsey, Mr. Livermore, Mr. Palmer; they are all active; Mr. McKee, Mr. McIntosh of the Bank of California, Mr. Nichols, Mr. Crocker; they are all active; they are all very attentive to meetings.

Q. And take an active interest in the company's affairs?

A. Take an active interest in the company's affairs and enter into discussions very fully.

Q. Could you compare the functions of the Board with those of the Executive Committee?

A. Well, the Executive Committee, of course, meets every week, and being a smaller body it can give more attention to details of operation, and it does do so, and under the bylaws of the company actions of the Executive Committee between meetings of the Board have all the authority of the Board of Directors.

Q. Well, now, at the meeting of the Board of Directors immediately succeeding the meetings of the Executive Committee [387] held in the interval, does the Board approve the action of the Executive Committee taken during that interval?

A. They do not.

Q. Such approval is unnecessary by reason of the fact that the Executive Committee has the authority which you have just mentioned?

A. Yes, that is it. I believe that authority is

(Testimony of David Hiram Foote.)

given by the laws of the State of California, as well as by our bylaws.

Q. Does Mr. Black ever advise the Board as to recommendations made to him by North American, the North American Company on matters which he submits to the Board?

A. It never occurred to me he did so; he has never done so in my presence.

Q. Since you have been a director have you never been advised from any source what North American's desires were with respect to a particular matter? A. Never.

Q. Has any member of the Board at a meeting attended by you ever inquired of Mr. Black whether he has conferred with North American representatives on a major problem and, if so, what suggestions were made by North American?

A. I think not, never. I can say I am quite sure that there has never been such a question asked.

Q. What weight, in your opinion, should be given to [388] any recommendations which North American might make in view of the fact that North American is the largest stockholder of your company?

A. That is a pretty hard question. (pause) I think that, as a large investor in our stock, their opinion ought to be given consideration surely, and if it was in accord with good business principles and to the best interests of the company, it might be followed, but if it was not, it should not be fol-

(Testimony of David Hiram Foote.)

lowed, that is all there is to it, and I wouldn't vote for it.

Q. Do you recall Mr. Hockenbeamer ever having advised the Board of suggestions made by North American during the time he was president?

A. No, I think not.

Q. Did Mr. Earl ever acquaint you or the Board at a meeting attended by you of the desires of North American Company during the time when he was a director of your company?

A. No, he never did.

Q. But he was the most active representative of North American that Applicant has ever had on its Board?

A. Yes, I think so; I think he was.

Q. Did he ever tell you that he kept North American fully informed as to the activities of the Board, and the Executive Committee? [389]

A. No; he told me that he sent to the North American Company the reports that were submitted to the Executive Committee.

Q. Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibit No. 5 and will ask you if you have ever seen the original of the document which that purports to be a copy of?

A. (Examining document) Yes, I think that is all right. That must have come from my—that must have come to me because it is addressed to me and,

(Testimony of David Hiram Foote.)

as a matter of fact, I have followed the requests since Mr. Earl's passing.

Miss Calkin: We offer in evidence Commi sion's Exhibit No. 5.

The Witness: I think that was at the commencement of my sending those reports. I know it was.

The Examiner: Have you a large number of these documents that you will offer now?

Miss Calkin: I haven't got a lot of them. I have got a few.

The Examiner: It is about 20 minutes past four. We are going to adjourn pretty soon at a convenient time, a convenient place for you, I mean.

Miss Calkin: I will just ask a few more questions.

Has that been admitted?

The Examiner: May I have that, Mr. Foote? [390]

(The document was handed to the Examiner.)

The Examiner: If there is no objection, this photostat of a memorandum of July 3, 1935, will be received in evidence and marked Commission's Exhibit 5.

(The document referred to above was marked Commission's Exhibit 5 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, has there ever been any major difference of opinion between your Board and Mr.

(Testimony of David Hiram Foote.)

Black since he has been president of the Applicant?

A. No, there has not.

Q. Do you recall the Board ever having disapproved of matters submitted and recommended by Mr. Black? A. No.

Q. Was the relationship between the Board and Mr. Hockenbeamer at all times harmonious?

A. Entirely so.

Q. Do you feel free to act as a director or officer upon a major problem pertaining to the Applicant's affairs without consultation with or obtaining the viewpoint of North American Company?

A. Oh, yes, absolutely. I wouldn't take the recommendation of anybody unless I thought it was right.

Q. In view of the fact that Mr. Earl was an active member of your Board it is true, is it not, that North [391] American's representatives on your Board have been less active since Mr. Black's presidency than they were under Mr. Hockenbeamer's presidency?

The Witness: Will you read that, please?

The Examiner: Read it, Miss Reporter.

(The question referred to was read by the reporter as above recorded.)

A. Well, I think they have been less active since Mr. Earl's death, but I cannot tie that in exactly with Mr. Black's election to the presidency.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Well, Mr. Earl, I believe Applicant's Exhibit No. 16 shows died June 25, 1935, and——

A. (interposing) Mr. Hockenbeamer died in August, didn't he?

Q. No, in November of 1935.

A. Yes, and Mr. Black was elected——

Q. (Interposing) Became president in the same month.

A. Yes, but Mr. Hockenbeamer was in full possession of his faculties and active when Mr. Earl died.

Q. Yes, but there has been no member, no representative of North American Company——

A. (interposing) Not since Mr. Earl died.

Q. (continuing) Active on your Board since Mr. Earl's [392] death?

A. I don't tie that in with Mr. Black's election at all because at the time of Mr. Earl's death, why, it was not thought that Mr. Hockenbeamer was going to die. He was president and there was no thought of any other president at that time.

Q. No, but Mr. Black became president within three or four or five months after Mr. Earl's death?

A. Oh, yes, of course, that was the natural—that was just—that was not contemplated at all when Mr. Earl died.

Q. No, I understand that.

A. In other words, there was nobody put in Mr. Earl's place while Mr. Hockenbeamer was president

(Testimony of David Hiram Foote.)

and I can't tie it in at all with Mr. Black's election to the presidency, in other words.

Q. Without tying it in, it is true that since Mr. Earl's death—put it that way—which occurred in June of 1935, North American has not had any active representation upon your Board of Directors?

A. No, no, not as active as he was.

Q. Who prepares your annual report to stockholders, Mr. Foote?

A. Well, it is prepared in the president's office and a number of departments help in it. [393]

Q. The final draft is prepared in the president's office?

A. Yes, the final draft is prepared in the president's office.

Q. Do you know whether or not a draft of your annual report to stockholders is submitted to the North American Company prior to the time it is submitted to your Board?

A. I think not; I think not, absolutely not; I never heard of it.

Q. Then, it is your best judgment that North American does not receive a copy of the annual report to stockholders until it is mailed out to all of the stockholders? A. That is my idea.

Q. That North American furnishes your company no advice or suggestions in connection with the preparation of that report?

A. No, I think not.

(Testimony of David Hiram Foote.)

The Examiner: Before we recess I would like to have the record show there have been, during the course of the day's session, from one to three persons present other than witnesses, counsel and parties, and I should like the record also to show that at these sessions of the hearing so far there has been present a gentleman who is an attorney admitted to practice in all the California Courts, perhaps, elsewhere.

I didn't get your name? [394]

Mr. McComish: John D. McComish of Pillsbury, Madison & Sutro.

The Examiner: Mr. McComish, I believe you are connected with the——

Mr. McComish: Standard Pacific Gas Lines.

The Examiner: Standard Pacific Gas Lines, Inc.

We will recess now until 10:00 o'clock tomorrow morning here.

(Whereupon, at 4:30 p. m., an adjournment was taken to Friday, November 15, 1940, at 10:00 a. m.) [395]

No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME II

Pages 473 to 973

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Proceedings

The Examiner: Whenever you are ready.

Whereupon——

DAVID HIRAM FOOTE

was produced as a witness for and on behalf of the Applicant and having been previously duly sworn, testified further as follows:

Cross Examination
(Resumed)

By Miss Calkin:

Q. Mr. Foote, what do you know about Mr. Black's selection as president of the Applicant?

A. What do I know about his election as president?

Q. Yes, his selection?

A. Oh, his selection. He was selected by the more prominent members of the Board of Directors and was nominated by—I have forgotten just who nominated him—but he was nominated by one of the prominent directors of the company.

Q. Well, who do you have reference to when you refer to the more prominent members of the Board?

A. Well, Mr. C. O. G. Miller, Mr. John D. McKee and Fred Elsey, I think, was alive then, and Mr. Allen Chickering.

Q. Well, who did you first hear mention the possibility of Mr. Black being selected?

A. At the meeting of the Board of Directors at which he was elected. [397]

(Testimony of David Hiram Foote.)

Q. At the same meeting at which he was elected?

A. Yes sir.

Q. That is the first knowledge you had that Mr. Black was being considered for the presidency?

A. It was.

Q. How long did that meeting occur after Mr. Hockenbeamer's death?

A. I think within a month.

Q. Well, did you hear any discussions prior to that Board meeting concerning Mr. Hockenbeamer's successor? A. No, I can't say that I did.

Q. Was anyone else ever considered for the presidency of the company?

A. Not at that Board meeting.

Q. Did you hear the matter discussed at any Executive Committee meeting preceding the Board meeting?

A. No, I did not; it was not discussed.

Q. Well, now, what was said at the Board meeting that you can now recall concerning Mr. Black's election?

A. It was stated that these gentlemen had consulted with other members of the Board and thought that Mr. Black would be a most suitable person to occupy that position, and they nominated him as president.

Q. Do you know whether or not at that time any member of the Board had conferred with Mr. Black?

[398]

(Testimony of David Hiram Foote.)

A. No, I do not.

Q. There was nothing said at that Board meeting concerning any contact between any member of the Board and Mr. Black?

A. No, no. Well, it may have been stated that they had talked to Mr. Black about it, or had discussed it with him. I have forgotten that; I think very probably that would be the case.

Q. Do you know whether or not the matter had been discussed with Mr. Fogarty or Mr. Freeman prior to the time of Mr. Black's selection?

A. No, I do not.

Q. You don't recall any director having said that they had talked the matter over with Mr. Fogarty?

A. No.

Q. And Mr. Black was unanimously elected to the position he now holds? A. He was.

Q. Do you recall any discussion which occurred at the meeting of the Board at which Mr. Black was elected concerning the possibility that by reason of Mr. Black's former association with the North American Company and its subsidiaries that he might be influenced and dominated by North American?

A. I don't recall any discussion of that kind; I think [399] there was none.

Q. So far as you now recall there was no consideration given to the possibililty that he might be influenced by North American?

(Testimony of David Hiram Foote.)

A. No, as far as I can remember there was no discussion.

Q. Do you know whether or not before Mr. Black was elected he gave any assurances to any member of the Board as to what his future action toward North American might be?

A. I have no—no, nobody ever discussed that with me at all.

Q. Did you, as a member of the Board, give any consideration to the fact that by reason of Mr. Black's former association with North American Company he might be influenced by them in his activities as president of the Applicant?

A. No. Although, of course, I did have in mind this fact: That the company had always been managed by the western contingent, by western men. The East had never had—no eastern concern or men had ever had any influence in the actions of our Board, as far as I know; in fact, I know that is a fact, at least, not in any of the formal meetings there was no discussion of that kind. Of course, I don't know what took place outside of Board meetings.

Q. Do you know of your own personal knowledge the extent of Mr. Black's contacts with the North American people [400] since he has been president of your company?

A. Since he has been president?

Q. Yes. A. No, I do not.

(Testimony of David Hiram Foote.)

Q. You don't know how frequently he corresponds or communicates with them regarding affairs of the Applicant? A. I do not.

Q. It would be possible for Mr. Black to seek and obtain advice from North American Company regarding the problems of the Applicant without your knowledge, would it not, Mr. Foote?

A. Yes, surely.

Q. How well acquainted were you with Mr. Black prior to the time he became president of the Applicant?

A. Very casually, hardly at all. I only knew him by reputation.

Q. You had very few personal contacts with him? A. Very few.

Q. Were you well acquainted with any representatives of the North American Company in 1935?

A. No, I was not.

Q. In your opinion, was the fact that the Board felt that North American should play a larger part in Applicant's activities one of the reasons why the directors selected Mr. Black as Mr. Hockenbeamer's successor? [401]

A. No, I had no such thought.

Q. Have any major changes in Applicant's operating or financial policies occurred since Mr. Black has been president of your company?

A. No.

Q. What is your personal feeling concerning the desirability of North American playing a major

(Testimony of David Hiram Foote.)

role in the management policies of the Applicant, Mr. Foote?

A. I can't see where it would be of the slightest advantage to the Pacific Gas and Electric Company.

Q. Would you personally resent any attempt to dominate the policies of the Applicant on behalf of the North American Company?

A. You say "resent"? I wouldn't have any resentment, but I would certainly disprove of it.

Q. Now, it is true, so far as you know, isn't it, Mr. Foote, that North American is furnished reports by the Applicant which are not furnished to all of its major stockholders?

A. North American is not furnished with that; the directors of the company are furnished with it, the eastern directors, because they have no opportunity to attend the meetings.

Q. Do you have anything to do with the preparation of the budget? [402]

A. Yes, yes; I prepare the budget for the Board of Directors of formal matters that are ready for action by the Board.

Q. In other words, a draft of the budget is submitted to you by Mr. Downing?

A. Well, I pickup the budget for the Board of Directors and——

Q. (Interposing) You prepare the final draft?

A. I prepare the draft. The resolutions are sent to me by the Law Department and I prepare that

(Testimony of David Hiram Foote.)

budget and send it up to the president the morning of the meeting.

Q. Well, do you, prior to the time the budget is sent by you to the president, send a copy of the proposed budget to the North American Company?

A. No, I send it to nobody; nobody gets it but Mr. Black.

Mr. Bosley: Are you referring to the annual budget or to these current statements that go out?

Miss Calkin: No, I am referring to the annual budget, not these current matters that are sent to—

The Witness (interposing) The annual budget, I thought you said. Pardon me. I confused it with the agenda for the Board. Do you mean the budget?

By Miss Calkin:

Q. The annual budget of the company. [403]

A. The annual budget, that is prepared by the general manager.

Q. Well, do you have anything to do with that?

A. No, I do not. Pardon me. I do not have anything to do with the budget.

Q. Well, do you know whether or not a draft of the proposed annual budget is sent to North American?

A. No, I don't know; no, I do not. I was thinking of the agenda for the Board.

Q. Do you know whether or not North American has ever suggested changes in the proposed budget prior to the time it was approved by the Board?

A. I do not.

(Testimony of David Hiram Foote.)

Q. Do you know of any instance in which North American has been consulted in regard to construction projects proposed by the Applicant prior to the time the matter was taken up by the Board?

A. No, I think not.

Q. You have very little to do in your capacity as secretary and treasurer of the company with such projects? A. Very little.

Q. Is that correct?

A. Yes, before they are adopted, or before they are approved by the Board or Executive Committee.

Q. So if anyone from the company conferred with North [404] American you probably wouldn't be advised of it? A. No, I wouldn't know.

Q. At any Board meeting attended by you, Mr. Foote, have you ever heard the views of North American Company regarding a particular construction project voiced by any member of the Board?

A. I have not.

Q. Do you know whether or not the Board has ever requested Mr. Black to obtain the views of North American Company on any construction project proposed by the Applicant?

A. They never have formally. That is, you mean the Board in formal action?

Q. Yes. A. No, they have not.

Q. Well, do you know whether or not any Board member has suggested it informally?

A. No, I don't know that. I know of no such request; I have never heard of it.

(Testimony of David Hiram Foote.)

Q. To your knowledge, has the Board ever approved or directed a course of action which it knew to be contrary to the wishes of the North American Company?

A. I believe not. It might have turned out to be so afterwards, but not before the action was taken.

Mr. Phleger: Well, would you mind reading that question again? [405]

(The question referred to was read by the reporter as above recorded.)

Mr. Gerdes: Read the answer.

The Examiner: Is there an answer there?

The Reporter: Yes.

(The answer referred to was read by the reporter as above recorded.)

The Examiner: Did you understand that question, Mr. Foote?

The Witness: Well, yes. The question was whether the Board had ever taken any action that it knew to be contrary to the wishes of the North American Company.

The Examiner: That is right.

Mr. Phleger: Of course, may it please the Examiner and counsel, some of these questions are phrased in such a way as to make it rather difficult to answer and convey a true situation.

Now, that question is predicated upon the assumption that there has been communicated to the Board

(Testimony of David Hiram Foote.)

of Directors on some occasion some statement as to North American's attitude. The witness has testified that such matter has never been presented.

Now, when a question is asked do you know of their ever having taken an action contrary to the views expressed by North American, it assumes that there has been at some [406] time an expression of North American's views.

The Examiner: Well, that is the possible construction on the question but, on the other hand, it seems to me the way it is worded "that it knew to be contrary" might or might not include an inference that they knew what the attitude of North American was.

Mr. Phleger: I think that is the fault of the question. In fact, he has already stated he never heard of the expression of North American's views with respect to any pending matter. That makes unnecessary, it seems to me, any question to the effect do you know that they have ever taken any action contrary to their views, and carries with it an implication that there must have been some expression of North American's views. It is not important but——

The Examiner (interposing): Well, do you want to change your answer in any respect, Mr. Foote?

The Witness: May I have the question and the answer?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

The Witness: Probably the best answer to that question would be "no, no."

By Miss Calkin:

Q. Has Mr. Black ever advised you or the Board at a meeting attended by you as to North American's views on any particular matter? [407]

A. No.

Q. Mr. Foote, have you ever discussed any phase of the Hetch Hetchy situation with any representatives of the North American Company?

A. No.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution plant in the City of San Francisco? A. No.

Q. Who recommends dividend payments to your Board, Mr. Foote? A. The president.

Q. Has that always been the custom?

A. Yes.

Q. Do you know whether or not Mr. Black confers with North American representatives concerning the amount of common stock dividends which the applicant should pay prior to the time his recommendations are made to the Board?

A. I do not.

Q. Does Mr. Black confer with any members of the Applicant's organization concerning the amount of dividends on the common stock prior to the time he makes his recommendations to the Board?

(Testimony of David Hiram Foote.)

A. I don't know. [408]

Q. He doesn't confer with you as treasurer of the company? A. No.

Q. Is the question of common stock, the amount of common stock dividends discussed at the meetings of the Executive Committee prior to the time recommendations are made to the Board?

A. No.

Q. Do you recall any instance in which the Board has refused to follow for Mr. Black's recommendations on the question of common stock dividends?

A. No.

Q. What about during Mr. Hockenbeamer's presidency?

A. The Board when they reduced the dividend on the common stock—Mr. Hockenbeamer thought that it might be paid for that particular quarter which was being considered and then at a later date it could be decided whether or not it should be reduced after the earnings of the company were known, would be known for the subsequent months.

Q. Well, do you have reference to the dividend for the third quarter of 1933? A. Yes.

Q. Well, who suggested that the dividends be reduced at that time? A. Who suggested it? [409]

Q. Yes.

A. I can't remember. There were two or three members of the Board that seemed to be ultra conservative on the subject and thought that as long as

(Testimony of David Hiram Foote.)

the company's earnings for the quarter had been somewhat reduced that it might be better not to pay the dividend but to pay only at the rate of 6 per cent per annum instead of at 8 per cent.

Q. And that was the rate of the dividend of the Applicant on its common stock from the third quarter of 1933 until the last quarter of 1936?

A. Yes. Well, wait a minute. Last quarter? Yes; it was three quarters, I think, paid at 8, and one quarter at 6—wasn't that right? Or was it two quarters at 8 and two quarters at 6?

Q. In '33, that is my understanding.

A. Well, the record will show. I can't carry——

Q. (Interposing) In '36 there were three quarters paid at 6 per cent and the last quarter at 8 per cent, isn't that correct?

A. The last quarter at 8 per cent?

Q. In 1936?

A. That was when it was restored?

Q. That is right. A. Yes, yes.

Q. Now, at whose suggestion was the dividend restored [410] to 8 per cent in 1936?

A. I think at the suggestion of the president. The president when he recommends the payment of the dividend, submits the company earning statements to the Board and if they—he draws attention to the fact that those earning statements warrant the payment of the dividend and suggests that they be paid in accordance with the usual custom.

(Testimony of David Hiram Foote.)

Q. Well, did you ever hear that North American protested the reduction of dividends in 1933?

A. I heard that they protested after the action was taken, yes.

Q. Do you know to whom they protested?

A. Mr. Hockenbeamer told me that they had protested.

Q. And what other comments did Mr. Hockenbeamer make at that time?

A. Well, he discussed the matter very freely with me—we were old friends—and he said, I think, that the president of North American had him on the telephone, long distance, and had him there for half an hour, as I recollect, and wanted him to get the Board to reconsider its action, but he would not.

Q. But Mr. Hockenbeamer refused to submit the matter?

A. Mr. Hockenbeamer—my recollection is that he told me that he wouldn't ask the Board to reconsider its action. [411]

Q. Well, was the matter reconsidered by the Board? A. It was not.

Q. Do you know whether or not Mr. Black recommended the increase of dividends in the last quarter of 1936 at the request of North American Company?

A. I know that he recommended the increase because the earnings of the company warranted it, but I don't know whether it was done at the request of

(Testimony of David Hiram Foote.)

North American Company. I have no knowledge on that subject.

Q. And you don't know whether or not Mr. Black confers with North American representatives regarding proposed dividends before the same are declared? A. I do not.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested would you, as a director of the company, request North American's opinion on the advisability of such action before it was taken by the Board?

A. No; my judgment would be based entirely upon the company's earnings.

Q. Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 6 and 7, and will ask you if you can identify those two documents.

A. (Examining documents) I don't think there is any question but I wrote these letters. Yes, the fact of the [412] matter is I recognize my handwriting as these were sent to Mr. Black; that is my handwriting.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 6 and 7.

Mr. Phleger: No objection.

The Witness: They are addressed to a member of the Board.

The Examiner: May I see them, please, Mr. Foote?

(Testimony of David Hiram Foote.)

The Witness: Yes. (Handing documents to the Examiner) They are addressed to Mr. Doolittle, who was a member of the Board of Directors at that time, I believe.

The Examiner: This photostat of what purports to be a telegram on a postal telegraph blank dated December 18, 1935, directed to Mr. F. W. Doolittle consisting of five typewritten lines of message will be received in evidence as Commission's Exhibit 6.

(The telegram referred to was marked Commission's Exhibit No. 6 and was received in evidence.)

The Examiner: The other telegram answering the same description, except it contains 6 typewritten lines of message, will be received in evidence as Commission's **Exhibit 7.**

(The telegram referred to was marked Commission's Exhibit No. 7 and was received in evidence.) **[413]**

The Witness: I could add that that information in those letters would be sent to any director of the company who happened to be absent from the city if he so requested.

By Miss Calkin:

Q. Now, what was the occasion for your wiring Mr. Doolittle?

A. I presume that I was asked to do so.

Mr. Bosley: Would you mind stating the purport of those telegrams so that I may know what you are talking about?

(Testimony of David Hiram Foote.)

The Examiner: Will you let me hear the last question and answer, please?

(The question and answer referred to were read by the reporter as above recorded.)

The Examiner: Have you seen those now, Mr. Bosley?

Mr. Bosley: What is that?

The Examiner: Have you seen the copy?

Mr. Bosley: She is just showing me the copy now.

By Miss Calkin:

Q. Mr. Foote, do you recall who requested you to advise Mr. Doolittle of the matters set forth in your first telegram to him?

A. No, I do not remember.

Mr. Bosley: Which one was marked 6 and which one 7?

Mr. Gerdes: What is the date of the letter?

Miss Calkin: Both December 18th. [414]

The Examiner: Both December 18th. The first one apparently is the shorter one, advises Mr. Doolittle of the proposed action of the Board and the second one, apparently after the meeting, advises him of the action taken at the Board meeting.

By Miss Calkin:

Q. Mr. Foote, I call your attention to the fact that both of these exhibits have written on them the name Mr. J. B. Black, which I believe, you stated

(Testimony of David Hiram Foote.)

was in your handwriting.

A. Yes, they were sent to him, yes.

Q. The copies were sent to him?

A. The copies were sent, yes.

Q. Do you now recall how the Board was advised that Mr. Fogarty's election as a director would be acceptable to the North American Company as one of its representatives on your Board at this time?

The Witness: I didn't hear that.

The Examiner: Read it, please.

(The question referred to was read by the reporter as above recorded.)

A. No, I can't recall, but undoubtedly the president so stated. He would be the one that—customarily in our activities he would be the one to give any information of that kind to the Board. [415]

By Miss Calkin:

Q. Now, Mr. Foote, I hand you what has been marked for purposes of identification Commission's Exhibits 8, 9, 10 and 11, and will ask you if you can identify those documents.

Mr. Phleger: Now, before going to that, counsel, may I inquire whether or not you have copies or originals of any communications passing from anyone connected with the North American Company to anyone connected with the Pacific Gas and Electric Company at or about the time that Exhibit 6 and 7 were sent?

(Testimony of David Hiram Foote.)

Miss Calkin: I don't understand your question, Mr. Phleger. You mean any other——

Mr. Phleger: Any communications from anyone connected with the North American Company to anyone connected with the Pacific Gas and Electric Company at or about the time of Exhibit 6 or 7 to which the material 6 or 7 might have been a reply?

Miss Calkin: Yes, I have two wires of December 17, 1935, which I intend to introduce when Mr. Black is on the stand.

Mr. Phleger: Don't you think that if those were shown to the witness it might refresh his recollection as to the occasion for his sending Exhibits 6 and 7?

Miss Calkin: Well, it might, except that he may never [416] have seen these wires.

Mr. Phleger: Well, maybe he did.

Miss Calkin: I mean they are wires between Mr. Doolittle and Mr. Black.

Mr. Phleger: Yes.

Miss Calkin: But I will be glad to show him the copies I have here.

Mr. Phleger: It is rather obvious his wires were an answer to some inquiry.

Miss Calkin: I won't introduce these at this time. I will hand these to you for the purpose of refreshing your recollection.

Mr. Phleger: Did you ever see those?

The Witness: I can't say that I did; no, I

(Testimony of David Hiram Foote.)

couldn't say that I did. I don't recollect ever having seen them.

Miss Calkin: Now, I believe my last question in reference to Commission's Exhibits——

The Examiner: 8 to 11.

Miss Calkin (continuing) —8 to 11, inclusive, is unanswered.

The Examiner: The witness was examining them.

A. Yes, I remember these letters.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 8 to 11, inclusive.

Mr. Phleger: No objection. [417]

The Examiner: The photostat of letter of January 6, 1936 of F. H. Piske, secretary of the North American Company, to Mr. D. H. Foote, vice-president, secretary and treasurer of P. G. & E., will be received in evidence and marked Commission's Exhibit 8.

(The photostat of letter referred to was marked Commission's Exhibit No. 8 and was received in evidence.)

The Examiner: Photostat of letter of January 16, 1936 from D. H. Foote, vice-president, on letterhead of P. G. & E. to F. H. Piske, secretary of the North American Company, received in evidence and marked Commission's Exhibit 9.

(The photostat of letter referred to was marked Commission's Exhibit No. 9 and was received in evidence.)

(Testimony of David Hiram Foote.)

The Examiner: Photostat of copy of letter of February 17, 1936 from F. H. Piske to D. H. Foote, and so forth, will be received in evidence and marked Commission's Exhibit 10.

(The photostat of copy of letter referred to was marked Commission's Exhibit No. 10 and was received in evidence.)

The Examiner: Photostat of a copy of letter March 12, 1936 from D. H. Foote, vice-president, and bearing a typewritten heading of Pacific Gas and Electric Company, to F. H. Piske, secretary of the North American Company, will be received in evidence and marked Commission's Exhibit No. 11.

[418]

(The photostat of copy of letter referred to was marked Commission's Exhibit No. 11 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, was Commission's Exhibit 8, which is the letter dated January 6, 1936, from Mr. Piske to yourself the first request which you had received from any representatives of the North American Company for copies of the minutes of the meetings of your Board? A. Yes.

Mr. Phleger: Will you read that, please?

(The question and answer referred to were read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. And Commission's Exhibit 9, which is a letter from yourself to Mr. Piske, dated January 16, 1936, is your reply to that request?

A. (Examining document) It is.

Q. And Commission's Exhibit No. 10, being Mr. Piske's letter to you of February 17, 1936, is a second request by the secretary of North American Company for copies of the minutes of the meetings of your Board, is it not?

A. Not exactly the second request, but a sort of followup letter asking what the decision had been as to the first letter, the first two letters. [419]

Q. Now, what did you do in reference to complying with the request made in the first letter of January 6, 1936?

A. I talked with Mr. Black about it.

Q. And what did he tell you?

A. Well, we had never done it, and we—I wondered whether we should do it, and when the next letter, followup letter came in, I talked to Mr. Black again and we thought it all over and couldn't see any objection particularly to it, although, of course, if it was asked for by a large number of people it would manifestly be not impossible but certainly very—make a great deal of unnecessary work.

Q. Well, now, are all of the directors of the company furnished with copies of the minutes of the meetings which they attend?

A. No, they are not.

(Testimony of David Hiram Foote.)

Q. Well, then, did Mr. Earl, during his lifetime, receive from you copies of the minutes of the meeting of the Board or Executive Committee?

A. He received—I think he received copies of the minutes of the Executive Committee but not of the Board.

Q. Well, did all other members of the Executive Committee likewise receive copies?

A. They could receive them if they desired, but they haven't asked for them. They are right there; they are read to them the next meeting so they don't want them. [420]

Q. Well, do you know why Mr. Earl requested copies?

A. He sent them to New York, I believe, sent them to the North American Company.

Q. It was your understanding, then, that during Mr. Earl's directorship and service on the Executive Committee that the North American Company received copies of the minutes of the Executive Committee from Mr. Earl?

A. My understanding was that Mr. Earl represented the North American Company and did send those copies to them.

Q. Well, during the period from Mr. Earl's death until the date of these letters in January, 1936, did North American receive copies of the minutes of the meeting of the Board or of the Executive Committee of your company?

(Testimony of David Hiram Foote.)

A. After Mr. Earl's death there was nobody went on the committee to represent them, the Executive Committee, and I was requested, as I recollect, by the president, to send the same papers to the eastern directors as Mr. Earl had sent or, I guess, to the North American Company that Mr. Earl had sent, but I always thought that the proper way to do was to send them to the eastern directors because they were directors and were not—did not attend the meetings and I thought they were entitled to knowledge as to what took place at those meetings.

Q. Well, do you now, and have you for some period of time furnished North American with copies of the minutes of [421] the meetings of the Executive Committee?

A. I have—for a time, I think, for a short time they were sent—maybe they might have been sent to Mr. Piske but with the idea that he would have them on file for examination by the eastern directors, the two eastern directors. At one time there I decided that they should be sent to the directors and I sent them after that to Mr. Fogarty.

Q. So that now and for some period of time Mr. Fogarty has received not only copies of the minutes of the Board, but copies of the minutes of the Executive Committee?

A. No; he has received copies of the minutes of the Executive Committee, but the copies of the

(Testimony of David Hiram Foote.)

minutes of the Board were not sent until after this correspondence took place.

Q. But since this correspondence he has received copies of the minutes of both the Executive Committee and the Board? A. Yes.

Q. Although North American has not had, since Mr. Earl's death, any representative on the Executive Committee? A. That is right.

Q. But these requests for minutes were not made by Mr. Fogarty in his capacity as director, but were made by the North American Company through its secretary, Mr. Piske?

A. Yes, that is right, by Mr. Piske, the secretary; [422] he made the request.

Q. But, I believe, if I understand your testimony correctly, in spite of the fact that the requests came from Mr. Piske as secretary of the North American Company, the minutes of both the Executive Committee and the Board of Directors are sent by you to Mr. Fogarty?

A. Yes. In other words——

The Examiner (interposing): And not to the company?

The Witness: Not to the company. In other words, I thought that the directors were the proper ones to receive those things, and not the stockholder. We don't send those things to stockholders. It would be manifestly impossible to send our minutes to 95,000 stockholders, you know and, of course,

(Testimony of David Hiram Foote.)

they being members of the Board I thought they were the proper ones to receive them.

By Miss Calkin:

Q. Well, now, is your reason for sending copies of the minutes of the Executive Committee when North American has no representative on that committee solely that Mr. Hockenbeamer requested you to send to North American everything which Mr. Earl had been in the habit of sending?

A. I have forgotten whether Mr. Hockenbeamer asked me to send them to North American or to the directors, but that, yes, yes, that is substantially true, I believe.

Q. Mr. Foote, I hand you what has been marked for [423] purposes of identification four photostatic copies of letters exchanged between you and Mr. Piske which have been marked for identification as Commission's Exhibits 12 to 15, inclusive, and will ask you if you can identify those documents?

A. (Examining documents) Yes, these are all right. These are all—I can identify all of these. I remember writing them; I remember receiving them and writing them.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 12 to 15, inclusive.

Mr. Phleger: No objection.

The Examiner: Photostat of a letter headed "Pacific Gas and Electric Company" dated April 20, 1930, to F. H. Piske, 60 Broadway, New York,

(Testimony of David Hiram Foote.)

signed D. H. Foote, will be received in evidence and marked Commission's Exhibit No. 12.

(The photostat referred to was marked Commission's Exhibit No. 12 and was received in evidence.)

The Examiner: Photostat of a copy of letter of April 29, 1936 to F. H. Piske, secretary, to D. H. Foote, vice-president of Pacific Gas and Electric Company, will be received in evidence and marked Commission's Exhibit No. 13.

(The photostat referred to was marked Commission's Exhibit No. 13 and was received in evidence.)

The Examiner: Photostat of a letter on letterhead of Pacific Gas and Electric Company to Mr. F. H. Piske, secretary of the North American Company, signed D. H. Foote, vice-president, [424] dated May 5, 1936, Commission's Exhibit 14.

(The photostat of letter referred to was marked Commission's Exhibit No. 14 and was received in evidence.)

The Examiner: Photostat of a letter of September 22, 1936, on the letterhead of Pacific Gas and Electric, to Mr. F. H. Piske, care of North American Company, signed D. H. Foote, vice-president, will be received in evidence and marked Commission's Exhibit 15.

(Testimony of David Hiram Foote.)

(The photostat of letter referred to was marked Commission's Exhibit No. 15 and was received in evidence.)

By Miss Calkin:

Q. Mr. Foote, these letters would indicate that from March until September of 1936, at any rate, you sent copies of the minutes of the meetings of the Board to Mr. Piske as secretary of North American Company.

A. Yes, but in doing so, I always had in mind, and I know the president also always had in mind that they were sent because officers of that company were directors of our company. In other words, if any large stockholder, for instance, Sun Life of Canada, if they had a representative on our Board of Directors, they would be accorded the same courtesy.

Q. Well, if any stockholder who did not have representation on your Board requested copies of the minutes of your Board or of your Executive Committee would that request be [425] complied with?

A. Depending largely upon the ownership, the size of the ownership.

Q. Well, do you recall when you first began sending copies of the minutes of the meetings of the Board and Executive Committee to Mr. Fogarty?

(Testimony of David Hiram Foote.)

A. I don't recall the exact date, but I didn't send them prior to Mr. Earl's death.

Q. Now, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 16 and 17 and will ask you if you can identify those documents.

A. (Examining documents) Yes, this is all right. These are both genuine.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 16 and 17.

The Examiner: Without objection the photostat of a letter dated March 31, 1937, on letterhead of Pacific Gas and Electric Company to Mr. F. H. Piske, secretary of the North American Company, signed D. H. Foote, vice-president, will be received in evidence and marked Commission's Exhibit 16.

(The photostat of letter referred to was marked Commission's Exhibit No. 16 and was received in evidence.)

The Examiner: Photostat of a letter on letterhead of Pacific Gas and Electric dated September 15, 1939, to Mr. J. F. Fogarty, 60 Broadway, New York, signed D. H. Foote, [426] vice-president, will be received in evidence and marked Commission's Exhibit 17.

(The photostat of letter referred to was marked Commission's Exhibit No. 17 and was received in evidence.)

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. Mr. Foote, is Commission's Exhibit No. 17 a typical form of the letter regularly sent by you with the minutes of the meeting of the Board?

A. May I see it?

(The document was handed to the witness)

Yes, it is. (Examining document)

Q. And that letter indicates that a copy of it was sent to Mr. Freeman. Is that customarily done?

A. I always send that under separate cover because he is the other New York director.

Q. Mr. Foote, do you know who the regular banks were for the Western Power Corporation system? A. I do not.

Q. Prior to 1930?

A. No. I never had anything to do with Western Power Corporation.

Mr. Bosley: The Western Power Corporation of New Jersey or the Western Power Company?

The Witness: No; the Great Western Power Company of [427] California is a different corporation altogether. The corporation is the eastern.

Miss Calkin: I was referring to the Western Power Corporation which was some holding company of the New York Corporation.

By Miss Calkin:

Q. Mr. Foote, who were the first bankers of the Applicant; that is, who were the first persons, bank-

(Testimony of David Hiram Foote.)

ing houses, active in the underwriting of Applicant's securities?

A. Who were the first? You mean how far back?

Q. Well, from the very beginning, the very inception of the company, who handled its first financing?

A. My recollection was it was N. W. Halsey & Company.

Q. Do you know Mr. Halsey?

A. Yes, I have met him quite a number of times, not intimate at all.

Q. Was he a Californian?

A. Occasionally he came to California.

Q. Do you know where the principal office of N. W. Halsey & Company was located?

A. New York City.

Q. Who succeeded N. W. Halsey & Company as the banker for the Applicant?

A. I think their business was taken over by the National City Bank. [428]

Q. National City Company?

A. The National City Company, yes sir.

Q. And about when did that occur?

A. Oh, I can't remember those dates; a long time ago.

Q. Do you know how N. W. Halsey & Company became interested in the Applicant's financing, the contacts that banking firm had with your company?

(Testimony of David Hiram Foote.)

A. Through John Martin and E. J. deSabla, the early—you might call them promoters.

Q. Well, who did you first become acquainted with in the National City Company organization?

A. The National City Company organization? Let me see. I knew George Weeks very well. He was with N. W. Halsey & Company. I don't know whether he went to National City Company or not; it seems to me that he did.

Mr. Bosley: Yes.

By Miss Calkin:

Q. Did Mr. Weeks spend a great portion of his time in California? Was he a resident of California?

A. Yes, all of his time was spent here in the early days. Later he went to New York and went to London, I believe, as a representative of the National City Company. I haven't seen him for many years.

Q. He was at one time a director of your company? [429]

A. Yes, in the very early days.

Q. Well, now, who succeeded Mr. Weeks as a representative of the National City Company in connection with your business, if you know?

A. I guess it was Stanley Russell. I think he was with the National City Company.

Mr. Bosley: Do you remember Mr. Conellen?

(Testimony of David Hiram Foote.)

By Miss Calkin:

The Witness: No, I don't remember Mr. Conellen.

Q. How frequently did you see Mr. Russell?

A. Mr. Russell?

Q. Yes. Did he reside in California?

A. No, I think not. My first close acquaintance with Mr. Russell was when our first refunding mortgage was prepared.

Q. When was that?

A. 1920, wasn't it? Along in there.

Mr. Bosley: Yes.

The Witness: He came out here.

Mr. Bosley: You are referring now to Mr. Stanley Russell, aren't you?

The Witness: Stanley Russell.

Mr. Bosley: Yes.

The Witness: And he came out here, and he and Mr. Hockenbeamer and myself formulated the first refunding [430] mortgage, went over all the provisions and they were afterwards submitted to our general counsel, Mr. Bosley, and put in shape by him.

By Miss Calkin:

Q. Would you say that from that time now until National City Company went out of the investment banking business that Mr. Russell was the primary representative of the National City Company in

(Testimony of David Hiram Foote.)

connection with your business?

A. Yes, and later he was with Lazard Freres—wasn't he?

Q. So that most of the negotiations between the Applicant and its principal underwriter from the period of 1920 until the last financing headed by National City Company which, I believe, was in 1931, were carried on with Mr. Russell?

A. Yes, yes, Mr. Russell, I believe, yes, but he came out here, and those negotiations were carried on by the president with Mr. Russell, although I knew of them, and occasionally sat in on the conferences, but not very often.

Q. Now, I believe later testimony will show that the Applicant had two pieces of financing after 1930, or after North American acquired its stock interest in the Applicant and prior to the time National City Company went out of business, namely, a twenty-five million dollar bond issue in July of 1930, and a twenty-five million dollar bond [431] issue in January of 1931. Do you know who formulated those two pieces of financing?

A. I think Mr. Hockenbeamer.

Q. Do you know whether or not Mr. Hockenbeamer conferred with North American regarding these two issues? A. I don't know that.

Q. Do you know who selected National City Company to be the principal underwriter in these two pieces of financing?

(Testimony of David Hiram Foote.)

A. Mr. Hockenbeamer. Mr. Hockenbeamer, he suggested that they be made the underwriters and that was authorized by the Board of Directors.

Q. Did you have anything to do with the selection of National City Company as syndicate manager or with the selection of any members of the syndicate which underwrote those two issues?

A. No, I did not; although I knew about it, but I had no voice in it.

Q. Do you know whether or not the Board or Mr. Hockenbeamer or National City Company selected the syndicate members?

A. Do I know what?

(The question referred to was read by the reporter as above recorded.)

The Witness: As far as I know they were selected [432] jointly by Mr. Hockenbeamer and the underwriters and the main underwriter.

By Miss Calkin:

Q. That is the National City Company?

A. The National City Company, yes. I believe that is unquestionably a fact.

Q. Now, who carried on——

A. (interposing) And then Mr. Hockenbeamer recommended those selections to the Board of Directors.

Q. Now, who carried on the negotiations between the Applicant and National City Company

(Testimony of David Hiram Foote.)

in respect to those two issues?

A. Mr. Hockenbeamer.

Q. Had it been customary for Mr. Hockenbeamer during his entire presidency to handle such matters?

A. Yes, and even before he was president. You see, Mr. Hockenbeamer had large experience with N. W. Halsey & Company in New York City when he came to us. When he came out here in 1907 and '08 his experience was considered valuable in that financing, and it was valuable unquestionably. He was a very efficient man in that respect.

Q. Was he considered as having a greater knowledge of financial matters than Mr. Creed during Mr. Creed's presidency? A. Yes. [433]

Q. Mr. Creed relied upon Mr. Hockenbeamer?

A. Very largely, I think, so did Mr. Drum, Frank Drum before Mr. Creed.

Q. And when Mr. Hockenbeamer was president he handled the matters almost by himself?

A. Naturally he handled them, yes.

Q. And no one in the organization succeeded to Mr. Hockenbeamer's position, the position, that is, that Mr. Hockenbeamer had during the presidency of Mr. Drum and Mr. Creed?

A. Hardly, no; not exactly.

Q. Do you know whether or not anyone representing Blyth and Company expressed any dissatisfaction regarding the second position of Blyth and

(Testimony of David Hiram Foote.)

Company in the two issues of 1930 and 1931?

A. No, I do not.

Q. So far as you know, Blyth and Company never made any effort to get the leadership of your business away from National City Company?

A. Oh, there were several bond houses that wanted to get the business.

Q. That was in 1930 and '31?

A. Oh, absolutely. They went to Mr. Hockenbeamer. I know he talked to me about it. There were several houses who wanted to bid for the bonds but we had always done [434] business with the National City Company, and our directors—my recollection is that our Board thought it was a good idea to do business with the same people.

Q. Well, now, your company didn't do any more financing from January of 1931 until March of 1935, did it, Mr. Foote?

A. Well, I think that is right, yes.

Q. And in 1935 you had an issue of forty-five million dollars of principal amount of bonds?

A. Yes sir.

Q. Now, was National City Company still in the investment banking business at that time?

A. I believe so, yes; no. The City Bank Farmers Trust Company, was it? Well, National—oh, the National City Company? Yes, yes, I believe so, although—now, wait a minute, wait a minute.

Q. I think, if you refresh your recollection——

(Testimony of David Hiram Foote.)

A. (interposing) I am not quite sure on that fact.

Q. The Banking Act of 1933 had been passed by that time which forced the divorcement of investment banking business from commercial banking business? A. That is right.

Q. I believe it is correct that National City Company after the passage of that Act and prior to the March 1935 issue had ceased to be engaged in the investment banking [435] business.

A. I remember something about that; that is true, I think.

Q. Now, do you recall who headed the syndicate which purchased the forty-five million dollar issue put out by your company in March of 1935?

A. I can't just remember that. I could identify it if I could see the documents, but I can't——

Q. (interposing) Well, do you recall the first piece of business which Lazard Freres & Company headed for your company?

A. It was about that time. Stanley Russell represented them, I know, but I can't just remember when that change, when that took place.

Mr. Bosley: It was in the spring of 1935 when we started to refund the earlier issues.

The Witness: Yes, and Lazard Freres had taken the business at that time.

Mr. Bosley: And Stanley Russell represented Lazard Freres?

The Witness: Yes, that is right.

(Testimony of David Hiram Foote.)

By Miss Calkin:

Q. In other words, after National City Company went out of the investment banking business Mr. Russell severed his association with the National City Company and became [436] associated with Lazard Freres & Company?

A. I believe that is a fact, yes sir.

Q. Now, what do you know about Lazard Freres & Company getting the leadership of the syndicate which purchased the forty-five million dollar issue of March 1935?

A. Very little, little or nothing about it. I don't know how it happened that they—except old associations. They were the natural—they were the successor of the former underwriters and Mr. Hockenbeamer knew Mr. Russell very well and he was here, but at the same time there were many others who tried to dig in and get the business.

Q. Well, who would you say was responsible for the selection of Lazard Freres & Company as the syndicate manager of that issue?

A. Mr. Hockenbeamer.

Q. Well, was there any discussion before the Board as to who should head that business?

A. There was a discussion before the Executive Commission.

Q. Were all the members of that committee in accord with the desirability of Lazard Freres having that business? A. Yes.

(Testimony of David Hiram Foote.)

Q. And that firm was recommended by Mr. Hockenbeamer? A. Yes.

Q. Do you know whether or not Mr. Hockenbeamer [437] consulted with North American people before he selected Lazard Freres as Syndicate manager of that issue? A. I do not.

Q. Do you know whether or not North American participated in the formation of the refinancing plan which was consummated by the issuance of the forty-five million dollars in bonds?

A. I do not.

The Examiner: Will this be a convenient time for a morning recess?

Miss Calkin: All right.

The Examiner: Are you on the same line of examination?

Miss Calkin: No. I have a great deal more.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [438]

The Examiner: We will resume the hearing.

By Miss Calkin:

Q. Mr. Foote, do you recall the names of any of the banking houses that attempted to get the leadership of the Applicant's financing in 1935?

A. I only know of that from conversations with Mr. Hockenbeamer. I don't know that the names were mentioned, but I know he told me there were

(Testimony of David Hiram Foote.)

a number of different houses that were trying to dig in, trying to get the business.

Q. You didn't have any personal contacts with the representatives of any of them?

A. I did not.

Q. Do you know whether or not Mr. Hockenbeamer conferred with North American representatives regarding the selection of Lazard, Freres & Co.? A. I do not.

Q. Did you ever discuss with any representative of the North American Company the leadership of this piece of business? A. I did not.

Q. Do you know of any correspondence between the Applicant and the North American Company relating to this matter? A. I know of none.

Q. Do you know whether or not there was any dissatis- [439] faction expressed by anyone concerning the manner in which the March 1935 issue was handled? A. I never heard of any.

Q. Are you acquainted with Mr. Blyth, Charlie Blyth? A. Yes.

Q. How long have you known him?

A. Oh, a great many years; not intimately.

Q. Did Mr. *Black* ever approach you in an effort to get the leadership of Applicant's financing for his firm in the early part of 1935?

Mr. Gerdes: Read the question, please.

(The question referred to was read by the reporter as above recorded.)

(Testimony of David Hiram Foote.)

Miss Calkin: I meant Mr. Blyth instead of Mr. Black. A. No, he did not.

By Miss Calkin:

Q. Has Mr. Blyth ever talked to you about the leadership of his firm? A. No.

Q. Are you acquainted with any other members of the Blyth & Co. organization? A. Yes.

Q. Which ones?

A. Well, Mr. Bernard Ford, and also Mr. Bashore.

Q. Mr. Bashore is in the New York office of Blyth & Co.? [440]

Q. You knew him prior to the association of the New York office with that firm? A. No.

Q. You knew him afterwards?

A. I did not know him prior to Blyth getting the underwriting on those bonds.

Q. How long have you known Mr. Ford?

A. Oh, since he was a small boy, but casually only.

Q. Did Mr. Ford ever approach you in an effort to get the leadership of the Applicant's financing for Blyth & Co.?

A. No. I knew Mr. Ford's father and mother.

Q. Did he ever discuss with you the question of his firm heading the business of the Applicant?

A. No, he never did.

Q. Did Mr. Hockenbeamer ever tell you whether or not either Mr. Fogarty or Mr. Freeman, or Mr.

(Testimony of David Hiram Foote.)

Black advised him as to whether Lazard Freres & Co., or some other house, should head the first piece of Applicant's financing in 1935?

A. I think not; I am quite sure he did not.

Q. Now, I believe later testimony will show that the next piece of financing of the Applicant was a $30,000,000 issue in June of 1935, and in that issue Blyth & Co. headed the business on the West Coast and participated in the management fee.

Do you know anything about why Blyth & Co.'s position [441] was improved in the second issue in 1935?

A. I can't say that I do, except that they were a western, he was a western man, and it was a western house, and they had financial standing, and we had known them for many years.

Q. Do you know whether or not any directors of the Applicant were endeavoring to get Blyth & Co.'s position in this business improved about this time? A. No, I do not.

Q. Did anyone ever tell you that Blyth & Co.'s representatives in New York City were endeavoring to get North American representatives to bring pressure to bear upon Mr. Hockenbeamer to get Blyth & Co. the leadership of that business?

A. No, I never heard of it.

Q. Did Mr. Hockenbeamer ever tell you that Blyth & Co.'s position was improved in the June 1935 financing of the Applicant by reason of the requests made of him by North American people?

(Testimony of David Hiram Foote.)

A. He never told me that. I don't know anything about it.

Q. Had you ever discussed the leadership of Applicant's financing with Mr. Black at this time, that is, in the early part of 1935?

A. I think not. We might have talked about it when [442] he was carrying on negotiations. He may have spoken to me about it.

Mr. Phleger: Will you make clear to the witness that the time you are questioning him about is in July 1935 before Mr. Black became president?

Miss Calkin: In the early part of 1935.

A. I cannot recollect. It was very casual, if at all.

By Miss Calkin:

Q. Is it your best judgment now that you did have some discussions with Mr. Black prior to the time he became president of Applicant regarding who should head the Applicant's financing?

A. No. I never had any discussion with Mr. Black prior to the time he became president.

Q. You never had any discussions with him at all? A. Not at all.

Mr. Phleger: That is, prior to November 20, 1935, when he was elected president.

The Witness: Never.

By Miss Calkin:

Q. The first piece of financing after Mr. Black became president was in March of 1936, I believe,

(Testimony of David Hiram Foote.)

at which time the Applicant sold a $90,000,000 issue of bonds to an underwriting syndicate headed by Blyth & Co.? [443] A. That is right.

Q. What do you know about the change of leadership from the September 1935 issue of $20,000,000, which was headed by Lazard Freres & Co., to the issue in March 1936 which was headed by Blyth & Co.?

A. Only that Mr. Black reported to the Executive Committee, or the Board of Directors, perhaps to both of them, that he felt that Blyth & Co. would be more suitable. They were a western house, a California house, and we had done business with them, and they are fine people, and that they had a selling organization that was probably second to none in the United States, extending all over the country.

Q. Did you ever hear any other directors express an opinion as to their feeling in regard to whether Blyth & Co. or Lazard Freres & Co. should have the leadership?

A. I think all the members were in accord with that idea that expressed themselves, and I think a number did.

Q. But that expression from them came only after Mr. Black's recommendation that Blyth & Co. head the business? A. I think so; yes.

Q. Prior to the selection of Blyth & Co. as the syndicate manager of the first piece of financing in 1936, did any representative of Blyth & Co. approach you in an effort to get business for that firm?

(Testimony of David Hiram Foote.)

A. No, they did not. [444]

Q. Did any member of the Board ever tell you that representatives of Blyth & Co. had approached them with the same motive in mind? A. No.

Q. Did Mr. Black ever tell you that his choice of Blyth & Co. as syndicate manager for the March 1936 issue of the company was favorable to the North American people? A. No, he did not.

Q. Do you know anything about how Dillon Read & Co. got a substantial participation in the March 1936 issue? A. No, I do not.

Q. Was their participation discussed at the Board? A. I think not.

Q. You don't know who selected them as syndicate members?

A. No. I think it was done jointly by Mr. Black and Mr. Blyth.

Q. You never heard anyone say that Dillon Read & Co. were included in that syndicate at the request of the North American Company?

A. No, I never did.

Q. Do you know why Dillon Read & Co., Kuhn-Loeb and Morgan, Stanley & Co. did not participate in the May and October issues of the Applicant?

A. I don't. [445]

Q. I believe later testimony will develop that Applicant issued and sold privately $15,000,000 worth of bonds in February of 1938. Do you know who determined that that issue would be privately placed rather than publicly sold?

(Testimony of David Hiram Foote.)

A. I think it was done after general discussion. The president brought up the question before the Executive Committee and it was agreed to and finally put in formal order, you know.

Q. Do you know whether or not the North American Company played any part in the determination to have a private placement rather than a public sale of those bonds?

A. No, I never heard of it.

Q. Do you know of any instance in which North American has been consulted in reference to the financial policies of the Applicant?

A. I do not.

Q. And those matters, that is, the financial policies of the company are, generally speaking, formulated by the president? A. Yes.

Miss Calkin: I think that is all.

The Examiner: Redirect examination?

Redirect Examination

By Mr. Phleger:

Q. The last question, Mr. Foote, was to the effect that the financial policies of the company are generally [446] formulated by the president, are they not, and your answer was "Yes". A. Yes.

Q. Does the president make it a custom to discuss at considerable length with the Executive Committee and with the Board also the major matters of financial policies? A. Yes, that is a fact.

(Testimony of David Hiram Foote.)

Q. Now, you have been asked in various forms and in various ways, whether or not action has been taken by the Board of Directors, or the Executive Committee, or officers of the Applicant, which might not be in accord with views of the North American Company. Have you ever heard at any time, with the single exception of the dividend action in 1933 that you have testified to, the name of the North American Company mentioned in connection with any action under consideration, or after action had been taken on the part of Pacific Gas and Electric Company?

A. No; I can't recall any discussions of that kind at all. It might have been mentioned. I can't say. But they had directors on the Board and it might have been mentioned that those directors were agreeable to this action, but I can't remember that distinctly. No point was made of it anyway.

Q. You have no recollection of it ever having been stated in the meetings of the Executive Committee, or the [447] Board of Directors, that the North American had this view or that view?

A. No, I do not. I don't remember any such statement.

Q. Would you have remembered it if such a statement had been made?

A. I think so; yes.

Q. Now, with respect to Mr. Black's incumbency, has any change taken place in the general organiza-

(Testimony of David Hiram Foote.)

tion of the company since Mr. Black became president? A. I think not; no important change.

Q. You have seen Exhibit 9, have you not, the organization chart of the company?

A. Yes; I am familiar with it.

Q. Has any change been made in the organization of the company since Mr. Black became president?

A. I think not.

Q. Who set up the various committees that are shown on that Exhibit?

A. My recollection is that, generally speaking, this organization scheme originated at the time that Mr. Creed was president.

Q. That was during the period 1920 to 1925, was it not? A. Yes. [448]

Q. 1926, rather.

Mr. Bosley: 1927.

Mr. Phleger: 1927.

The Witness: Yes.

By Mr. Phleger:

Q. And that organization, in the method of operation through the Executive Committee, and other committees of officers, has remained unchanged since Mr. Creed's administration to the present date?

A. I think so; yes. If there were any changes they have been very minor.

Q. Has Mr. Black made any change that you know of in any of the major features of operation,

(Testimony of David Hiram Foote.)

management, or policy since he has become president? A. I think not.

Q. The policies that are in effect now are the same that have been in effect for many years?

A. Yes.

Q. Now, Mr. Foote, various letters passing between yourself and Mr. Piske, Mr. Doolittle and Mr. Fogarty have been introduced in evidence. Am I correct in stating that Commission's Exhibit 6, consisting of a telegram dated December 18, from you to Mr. Doolittle, and Commisson's Exhibit 7, consisting of a telegram dated December 18, 1935, to Mr. Doolittle were both sent by you at the request of someone else? [449]

A. Yes, I believe so; oh, yes, undoubtedly.

Q. All of these letters that were exchanged by you have to do with your forwarding to Mr. Piske or to Mr. Doolittle or to Mr. Fogarty certain information which they had previously requested, is that not so? A. Yes.

Q. And the inception of this correspondence was a letter to you from Mr. Piske, was it not?

A. Yes.

Q. I am showing to the witness a letter from himself to Mr. Piske, dated December 31, 1935, reading as follows:

"Pursuant to your letter of December 28 I am enclosing list of directors and officers of Pacific Gas and Electric Company as of the present date"—and so forth.

(Testimony of David Hiram Foote.)

This letter of Mr. Piske's of December 28, referred to in your letter, was the inception of your correspondence, was it not? A. Yes.

Q. And all of the subsequent letters had to do with your acceding to various requests by Mr. Piske, or Mr. Fogarty, or Mr. Doolittle, for information which you thereafter forwarded them?

A. That is right.

Q. Now, when Mr. Piske requested a copy of the minutes of the meetings of the Board of Directors, by his [450] letter of January 6, 1936, Commission's Exhibit 8, you did not immediately accede to his request, did you? A. I did not.

Q. You referred the matter to the president of the company? A. Yes.

Q. And it was a considerable time, was it not, before that request was finally acceded to?

A. Yes.

Q. I show you Commission's Exhibit 11, being a letter from you to Mr. Piske, dated March 12, 1936. A. Yes.

Q. Does that refresh your recollection as to when you finally acceded to the request?

A. Yes, it does.

Q. That is, some two or three months after the request was originally made?

A. Yes; that is right.

Q. Now, you have testified that copies of the minutes went forward after that request, first, to Mr. Piske? A. Yes.

(Testimony of David Hiram Foote.)

Q. But that later you changed the practice and forwarded the copies of the minutes directly to Mr. Fogarty? A. Yes.

Q. Is that correct? [451]

A. That is right.

Q. That has been your practice for some time since? A. Yes.

Q. With respect to the increase of the dividend of the company from the rate of 6 percent per annum to 8 percent per annum, which took place in the last quarter of 1936, you have testified that the recommendation for that increase came from Mr. Black. That is correct, is it not?

A. I believe it is; yes, sir.

Q. Did he present at this time financial statements to the Board?

A. He did. That is his practice always in connection with dividends.

Q. It is a fact, is it not, that in connection with all dividend declarations statements of earnings and of the financial condition of the company are presented to the Board of Directors?

A. Yes, that is a fact.

Q. And it is in connection with that that the president makes his recommendation?

A. Absolutely.

Q. Do you recall whether or not the earnings prior to the increase of the dividend rate in 1936 had been showing an increasing trend?

(Testimony of David Hiram Foote.)

A. Just prior, yes; just prior to that increase they [452] had. Well, now, I don't recall what the earnings were, but it must have been so.

Q. If you don't recall you just say so.

A. I don't recall that.

Q. Did you ever hear the name of North American mentioned in connection with any financing by the company? A. I think not.

Q. So far as you know, or your records show, has the North American Company ever participated in any financing of the Applicant?

A. No, they have not.

Q. With the exception of the contract between the Pacific Gas and Electric Company and the North American Company covering the acquisition by Pacific Gas and Electric Company of stocks of Great Western and San Joaquin, has the Pacific Gas and Electric Company ever entered into any contract with the North American Company?

A. I think not; no, they have not.

Mr. Phleger: That is all.

Miss Calkin: No further questions.

The Examiner: If there are no further questions you may be excused, Mr. Foote. Thank you.

(Witness excused.)

Mr. Phleger: I will call Mr. Hodges. [453]

Whereupon—

E. W. HODGES

was produced as a witness by and on behalf of the Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. What is your full name, Mr. Hodges?

A. E. W. Hodges.

Q. Where do you live? A. In Piedmont.

Q. California? A. California.

Q. How long have you lived in California?

A. Since 1905.

Q. What position do you now hold with the Pacific Gas and Electric Company?

A. I am Comptroller for the company.

Q. How long have you occupied that position?

A. Since 1927.

Q. What were your positions with the company prior to 1927?

A. Prior to my appointment as Comptroller in 1927 I was General Auditor of the company from December of 1920 to that date; and prior to December of 1920 I was in the general [454] auditing department in charge of the general books of account from April of 1917, which was the date I first entered the employ of the company.

Q. What has been your education?

A. I have attended grammar and high school,

(Testimony of E. W. Hodges.)

business college, various lecture and extension courses of the University of California.

Q. What positions did you occupy before you entered the service of the company?

A. My first employment was with the San Francisco-Oakland Terminal Railways in November of 1907. I was in the accounting department of that company from that date until April of 1917. At the time I left the service I was Chief Clerk for the department, and left there to enter the service of the Pacific Gas and Electric Company.

Q. So that the entire period of your employment has been with the San Francisco-Oakland Terminal Railways up until 1917, and since 1917 with the Pacific Gas and Electric Company?

A. That is correct.

Q. Will you describe generally your duties as Comptroller?

A. Well, I have charge of all of the accounting records of the company, the preparation of various reports and statements for regulatory commissions, and also all tax matters.

Q. Do you prepare all reports for the California [455] Railroad Commission and the Federal Power Commission?

A. Yes. They are prepared in my department.

Q. I show you Exhibit 9, which is a chart of the corporate organization. From it will you describe your position relative to the other officers, committees and the Board of Directors of the company?

(Testimony of E. W. Hodges.)

A. Well, I report directly to the president of the company. I am a member of the President's Advisory Committee, and also of the Appropriations Committee.

Q. What matters are considered at the meetings of the Advisory Committee?

A. All matters of any character that are important in respect to the company affairs.

Q. How frequently does the Committee meet?

A. Each Monday.

Q. Will you describe now generally the extent to which the affairs of the company are regulated by the Public Utilities Act and by the California Railroad Commission acting under it?

A. The California Railroad Commission, as presently constituted, was created by the people of this State by Constitutional amendment (Article XII, Section 22, adopted October 10, 1911). By further amendment of the Constitution (Article XII, Section 23) adopted the same date, "public utilities" as used in that section of the Constitution was [456] defined to include the several classes of business therein mentioned, and the Legislature was given the right to confer upon the Railroad Commission power to supervise and regulate such public utilities.

Pursuant to the latter authorization the Legislature (Extra Session 1911) enacted the "Public Utilities Act" which was approved by the Governor December 23, 1911 and became effective March 23, 1912. By this Act the Commission was given power

(Testimony of E. W. Hodges.)

to regulate and control all public utilities of the State, except that incorporated cities and towns of the State, including the City and County of San Francisco, retained the powers over public utilities which they had on March 23, 1912, with the privilege, however, of voting those powers to the Railroad Commission.

On November 3, 1914, Section 23 of Article XII of the Constitution was amended so as to provide, in effect, that the Legislature should have the power to confer upon the Railroad Commission jurisdiction over all the rates of all public utilities in the State, in incorporated cities and towns as well as in unincorporated territory. The authority thus conferred was exercised by the Legislature when it passed the Revised Public Utilities Act (enacted April 23, 1915, effective August 8, 1915).

Since 1915 the Public Utilities Act has been amended a number of times. In most instances such amendments were made [457] for the purpose of broadening the scope of the Commission's powers respecting the regulation and supervision of public utilities.

The Railroad Commission's jurisdiction to supervise and regulate public utilities, under the Constitution and laws of this State as now in effect, is very comprehensive. Such has been the fact since 1912 and particularly so since 1915 when its rate fixing powers were enlarged to include service in

(Testimony of E. W. Hodges.)

both incorporated cities and towns and unincorporated areas.

Stated in general terms the Commission's powers of regulation and supervision cover all matters relating to public utility rates, rules and regulations, contracts and practices, equipment, facilities, or service; additions to and betterments of plant, methods of manufacture, distribution, transmission, storage or supply; safety and health of employees, patrons, customers and the general public; standards for measurement of quantity, quality, pressure, voltage or other conditions pertaining to the supply of the product, commodity or service furnished, accuracy of meters and appliances for measurements and the testing of such appliances; accounting practices and procedure, including forms of accounts, records and memoranda to be kept and maintained; the exercise of franchise rights and the regulation of competition between utilities by means of certificates of public convenience and necessity; the ascertainment for each purpose specified in the Public Utilities [458] Act of the value of the property of each public utility in the State, and the making of revaluations to ascertain the value of additions, betterments, extensions and new construction; the sale, lease, assignment, mortgage or other disposition or encumbrance of the whole or any part of the property of a public utility necessary or useful in the performance of its duties to the public; the merger or consolidation, directly or indirectly,

(Testimony of E. W. Hodges.)

by a public utility of its properties, or any part thereof, with any other public utility; the purchase, acquisition, taking or holding by one public utility of any part of the capital stock of any other public utility *of any part of the capital stock of any other public utility* organized and existing under the laws of California; the issuance of stock, stock certificates or other evidences of interest or ownership, and bonds, notes or other evidence of indebtedness; the accounting for the disposition of the proceeds of all sales of securities; the assumption by a public utility of any obligation or liability as guarantor, indorser, surety or otherwise in respect of the securities of any other person, firm, or corporation; inspection of accounts, books, papers and records; hearing and deciding complaints respecting any act or thing done or omitted to be done by any public utility, including any rule, regulation or charge previously fixed by or for any utility, in violation, or claim to be in violation, of any order or rule of the Commission; to order reparation, [459] with interest from date of collection, on account of an unreasonable, excessive, or discriminatory charge; to require any public utility to file monthly reports of earnings and expenses and periodic or special reports concerning any matter about which the Commission is authorized by law to enquire or to keep itself informed on.

Under the provisions of the Public Utilities Act each public utility is required to furnish to the

(Testimony of E. W. Hodges.)

Commission in such form and detail as the Commission may prescribe, all tabulations, computations and all other information required by it to carry into effect any of the provisions of the Act, and to make specific answers to all questions submitted by the Commission; also, to deliver to the Commission upon request copies of any or all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or in any manner affecting its business, and also a complete inventory of all its property in such form as the Commission may direct.

The Railroad Commission has, since its inception, issued ninety-four (94) general orders; the majority of which are still in force and effect. The more important general orders which relate to gas and electric public utilities subject to its jurisdiction, are the following:

General Order No. 24-A. Relating to the preparation and filing of monthly reports showing receipts and disbursements from the sale of stock, bonds and other evidence of [460] indebtedness which have been authorized to be issued by the Commission.

General Order No. 28. Relating to the preservation of all records, memoranda and papers supporting each and every entry in certain of the general books of public utilities.

(Testimony of E. W. Hodges.)

General Order No. 46. Containing regulations governing the protection and guarding of moving machinery, power, transmission, and other mechanical equipment, ladders and stairways, and so forth.

General Order No. 48. Relating to the obtaining of consent of the Railroad Commission to withdraw entirely from public service or withdraw from public service in any portion of the territory served.

General Order No. 52. Governing the construction and operation of power and communication lines for the prevention or mitigation of inductive interference.

General Order No. 54. Prescribing the form and regulations governing the construction and filing of rates, rules and regulations affecting rates and service for gas utilities.

General Order No. 55. Prescribing the form and regulations governing the construction and filing of rates, rules and regulations affecting rates and service for electric utilities.

General Order No. 58-A. Containing detailed standards for gas service in the State of California and the maintenance [461] of records therein specified.

General Order No. 64-A. Containing rules and standards of overhead line construction (this General Order, together with the supplements thereto, comprises approximately 350 printed pages).

General Order No. 65. Relating to the filing by each public utility, whose operating revenues exceed

(Testimony of E. W. Hodges.)

$50,000 per year, of monthly financial and operating reports.

General Order No. 77-A. Containing regulations respecting the filing with the Railroad Commission of salary data, donations, contributions and subscriptions.

General Order No. 78. Governing the filing with the Commission of contracts for special services or providing deviations from filed rates, charges, classifications, contracts, rules or regulations.

General Order No. 94. Prescribing a uniform procedure for the design, operation, maintenance and inspection of all gas holders and hydro-carbon vessels operated by public utilities in the State of California, including the keeping of records and the making of reports as therein required.

The Examiner: Will you let the reporter have a copy of that statement you have just read? It may be helpful in transcribing the record.

The Witness: Yes. [462]

By Mr. Phleger:

Q. Mr. Hodges, has the company complied with the various orders, rules, regulations and provisions of the Public Utilities Act that you have described?

A. I believe it has fully done so; yes.

Q. It has regularly filed all of the reports called for by the Act and by the Orders? A. Yes.

Q. Will you describe briefly the uniform system of accounts prescribed by the Railroad Commission for electrical corporations which is now in effect?

(Testimony of E. W. Hodges.)

A. The present uniform system of accounts for electrical corporations was prepared by the Railroad Commission and made effective January 1, 1938. It is in practically all respects a copy of a similar classification of the Federal Power Commission. The classification, of course, covers all of the company's financial accounts, the balance sheet, profit and loss, and income accounts.

Of course, there is a complete set of primary accounts supporting each of the general accounts that I have mentioned.

Q. Now, while an existing or presently effective uniform system of accounts was made effective on January 1, 1938, there existed prior thereto, did there not, a uniform system of accounts which, while differing in some particulars, is substantially the same? [463]

A. That is correct. The classication in effect prior to that date for electrical corporations, I believe, became effective on January 1, 1923, and it likewise was an adaptation of the corresponding classification of the Federal Power Commission.

Q. When did the California Railroad Commission first prescribe a uniform system of accounts for electrical corporations?

A. The first classification was prescribed and became effective on January 1, 1913.

Q. And a uniform system has been described and in effect ever since that date?

A. That is correct.

(Testimony of E. W. Hodges.)

Q. Now, with respect to gas, has the Commission prescribed a uniform system of accounts?

A. There have been two uniform systems of accounts prescribed by the Commission. The first was effective January 1, 1913 and the second, I believe, became effective on January 1, 1924.

Q. Are the reports filed pursuant to the uniform system of accounts open to the public?

A. They are.

Q. Have there ever been, since you have been with the company, any increases or decreases in the recorded costs of investments, plants, properties, or intangible assets on the [464] books of the Applicant resulting from revaluing such assets?

A. No.

Q. Has the company ever recorded acquired properties upon its books at other than the cost thereof to the Applicant?

A. No. I think that——

Q. (interposing) Where the company——

Mr. Bosley (interposing): Just a moment.

The Examiner: Were you going to explain your answer?

A. (continuing) I think that maybe I might state in that respect that in the case of certain acquisitions the Railroad Commission has required that in recording the cost on our books that we should record it on the basis of original cost. The over-all effect of that, however, insofar as our total plant account is concerned, is that the cost, as re-

(Testimony of E. W. Hodges.)

corded in our accounts, does represent the actual cost to the company of all acquired properties. That is due to the fact that the account that they require us to keep, known as the Acquisition Adjustment Account, is also a part of the Plant and Property Account and in that account is carried the difference between the cost to the utility and the original cost of the property acquired.

Mr. Bosley: By "original cost" you mean the original cost to the company first putting it to public utility use?

The Witness: Yes.

Mr. Bosley: Under the regulations of the Commission? [465]

The Witness: That is correct.

By Mr. Phleger:

Q. When the company has acquired properties and paid for those properties in stock how has that acquisition been recorded?

A. Any property acquired by stock, where the company has issued its capital stock in the acquisition of the capital stock or properties of other companies, has never been recorded on its books at an amount in excess of its par value.

Q. That is irrespective of the market value of the stock so issued? A. That is correct.

Q. Is it fair then to summarize your testimony to this effect: That the company has never recorded acquired properties upon its books at other than the cost thereof, except when those properties were

(Testimony of E. W. Hodges.)

acquired in exchange for stock, the par value only of the stock was recorded, and in those cases where the Commission has directed that the original cost to the original owner be recorded, that the company has complied with such orders?

A. That is correct.

Q. Describe generally the depreciation policy of the Pacific Gas and Electric Company and state the allowance made by it for depreciation and maintenance.

I will withdraw that question. [466]

The Examiner: Are you going to consume some time with this next line of examination?

Mr. Phleger: Yes. I do not know whether you want to run until 12:30 or not.

The Examiner: I thought probably it would be convenient for you to stop in ten or fifteen minutes.

Mr. Phleger: It is a matter of your convenience. This is a suitable time to adjourn.

The Examiner: If you have any material there that you want to present you may proceed with it.

Mr. Phleger: There is quite a bit of it.

The Examiner: We will take our noon recess at this time and return at 2:00 o'clock.

(Whereupon at 12:10 p. m. a recess was taken until 2:00 o'clock p. m. of the same day.)

[467]

Afternoon Session

(Whereupon pursuant to the taking of recess, the hearing reconvened at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing whenever you are ready.

Mr. Gerdes said he was not quite ready; whenever you are.

Mr. Gerdes: Yes.

The Examiner: Mr. Phleger?

Mr. Phleger: Yes.

Whereupon—

E. W. HODGES

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination
(resumed)

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 34 two sheets physically attached, the first headed "Pacific Gas and Electric Company and subsidiary companies, statement showing accumulation of depreciation reserve years 1909 to 1939 inclusive"; the second sheet headed "Pacific Gas and Electric Company and subsidiary companies, statement showing accumulation of depreciation reserve during years 1909 to 1939, inclusive." [468]

The Examiner: This document consisting, as Mr. Phleger *as* stated, of two pages will be received in evidence and marked Applicant's Exhibit 34.

(Testimony of E. W. Hodges.)

(The document consisting of two pages referred to was marked Applicant's Exhibit 34 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you prepare Exhibit 34?

A. This exhibit was prepared by my department, yes.

Q. And are all of the facts and figures shown on it true and correct? A. They are.

Q. Will you state briefly for the record what it shows.

A. The statement shows the provision the company has made for depreciation commencing with the year 1909, the amount of the additions to the reserve, the amount of the charges to the reserve, and the balance in the reserve at the end of each year to and including the year 1939.

Q. It shows, does it not, that as of the end of 1939 that a reserve for depreciation amounted to $116,313,009? A. That is correct.

Q. Since you have been with the company has there been any substantial change in the policy or practice of accruing depreciation, maintenance, or in any other accounting policy or practice?

A. Up until the end of the year 1919 I believe it was— [469] the amount provided for depreciation was an amount determined on the basis of the judgment of the management as to the amount necessary for that purpose. In other words, the amount

(Testimony of E. W. Hodges.)

of the accrual was not determined on the basis of life tables——

The Examiner (interposing): On the basis of what?

The Witness: On the basis of life tables, or the estimated life of the property. Subsequent to that time, however, the accruals to the reserve had been based on the estimated life of the property.

In respect to the accounting for maintenance, I think I can say that the same policy had been pursued from the beginning until the present time.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 35 a statement headed "Pacific Gas and Electric Company and subsidiary companies provision for maintenance and depreciation out of earnings showing percentages of gross operating revenue by years, 1906 to 1939 inclusive."

The Examiner: This schedule consisting of a single page will be received in evidence in the absence of objection and marked Applicant's Exhibit 35.

(The single page document referred to was marked Applicant's Exhibit No. 35 and was received in evidence.) [470]

By Mr. Phleger:

Q. Was Exhibit 35 prepared under your direction, Mr. Hodges? A. It was.

Q. It is true and correct? A. It is.

Q. Will you explain briefly what it shows.

(Testimony of E. W. Hodges.)

A. The statement shows for the years 1906 to and including the year 1939 the gross operating revenue of each year, the amount of the provision for maintennce, and the percentage of the gross operating revenue each year, the amount of the provision for depreciation and the percentage of gross operating revenue and the total provision for maintenance and depreciation, and percentage of gross operating revenue for each year.

Q. And it shows, does it not, Mr. Hodges, that for the year 1939 the total provision for maintenance and depreciation out of revenues amounted to $19,390,586 which was 18.092 per cent of the gross operating revenue for that year?

A. That is correct.

Q. Can you state generally how the provisions for depreciation and maintenance of Applicant compares with the provisions made generally in the public utility industry in this country?

A. Comparing this company's provision for maintenance [471] and depreciation with that of other utilities—I have a copy of a report submitted by the Director of the Public Utilities Division of the Securities and Exchange Commission to its chairman, dated June 29, '39, covering financial statistics for the year 1938 of 177 electric and gas subsidiaries of registered public utility holding companies.

This report shows that the average provision for maintenance and depreciation of the 177 companies was 5.81 per cent and 10.3 per cent respectively of

(Testimony of E. W. Hodges.)

their operating revenue for the year, or a total provision of 16.11 per cent.

During this same year this company and its subsidiaries made provision for maintenance and depreciation of their properties of 4.539 per cent and 14.176 per cent respectively of their operating revenue, or a total provision of 18.715 per cent.

I might also say that I have already prepared a statement showing the accumulation of the company's depreciation reserve by years, from 1909 to December 31, 1939, and this statement shows that the total additions to the reserve during this period aggregated the sum of $205,111,240.

The Examiner: That is the figure shown on Exhibit 34?

The Witness: Yes, I believe it is. The additions to the reserve include the reserves of acquired companies as of the date of their acquisition.

During the same period there was charged to the reserve [472] $88,798,230 representing cost of property retired after allowance for salvage and cost of removal. This left a balance in the reserve as of December 31st '39 of $116,313,009, equivalent to 16.13 per cent of the total plants and properties account of $720,982,452.

Referring again to the statistical report of the Public Utilities Division of the Securities and Exchange Commission for 1938 it shows that the aggregate depreciation reserve as of December 31, 1938 of 177 companies was 10.05 per cent of their total plant and property account.

(Testimony of E. W. Hodges.)

As of this same date the company's reserve was $107,350,588 or 15.2 per cent of its total plant and property account.

By Mr. Phleger:

Q. Mr. Hodges, has there been any change in policy or practice regarding depreciation maintenance or any other accounting policy or practice since the North American became a stockholder in the Pacific Gas and Electric Company in 1930?

A. None whatever.

Q. Have you ever received any advice, suggestion or direction from the North American Company directly or indirectly with respect to any of the matters coming under your charge in the Pacific Gas and Electric Company? A. No. [473]

Q. Has the Pacific Gas and Electric Company ever issued securities upon the basis of paper profits from intercompany transactions? A. No.

The Examiner: Will you read that question for me, please?

(The question referred to was read by the reporter as above recorded.)

By Mr. Phleger:

Q. Has the Pacific Gas and Electric Company ever issued securities upon the basis of paper profits from intercompany transactions?

The Examiner: I missed part of it. The band started to play out here.

A. The answer is "no".

The Examiner: Thank you.

(Testimony of E. W. Hodges.)

By Mr. Phleger:

Q. Has the Pacific Gas and Electric Company ever issued securities in anticipation of excessive revenues from subsidiary companies?

A. No.

Q. Has your company ever shown in its financial statements any inter-company profits?

A. No.

Q. Has the Pacific Gas and Electric Company ever paid [474] any fees to the North American Company or any other holding company for fiscal services, management services, construction services, or any other kind of service of a similar nature?

A. No.

Q. What are the names of the firms which have audited the books of the Pacific Gas and Electric Company?

A. We have had two different firms.

For the period 1906 to 1923, inclusive, the accounts of the company and its subsidiaries were audited by the accounting firm of Price Waterhouse & Company, and for the period 1924 to date the accounts have been audited by the accounting firm of Haskins & Sells.

Q. What has been the extent of the audits by these firms?

A. Haskins & Sells account certificate addressed to the Board of Directors, Pacific Gas and Electric Company, states: I quote: "We have examined the consolidated balance sheet of Pacific Gas and Elec-

(Testimony of E. W. Hodges.)

tric Company and its subsidiary companies as of December 31, '39, the related statement of consolidated net income and summary of consolidated surplus for the year ended that date, and the balance sheet of Pacific Gas and Electric Company as of December 31, 1939, have reviewed the systems of internal control and the accounting procedure of the companies, and have examined or tested their accounting records and other [475] supporting evidence by methods and to the extent we determined appropriate.

"In our opinion, the accompanying balance sheets and related statement of consolidated net income and summary of consolidated surplus fairly present the financial condition of the companies at December 31, '39, and the results of their operations for the year ended that date in conformity with generally accepted accounting principles followed by the companies on a basis consistent with those of the preceding year."

The Examiner: May I ask you, was a copy of the financial statements with which that certificate was accompanied, or accompanied by that certificate filed with the Securities and Exchange Commission under the Securities and Exchange Act, do you know?

The Witness: This certificate from which I have been reading is a certificate appearing in the company's annual report to stockholders and I believe approximately the same certificate is contained in

(Testimony of E. W. Hodges.)

the annual report filed with the Securities and Exchange Commission.

The Examiner: Thank you.

By Mr. Phleger:

Q. Have there been any business transactions of any kind between Applicant and North American Company or any of its subsidiaries and affiliates since June 12, 1930? [476] A. No.

Q. With the single exception of the transaction whereby Applicant acquired the stock of Great Western and San Joaquin from the North American Company in 1930, has there ever been any business transaction of any kind between the North American Company, its subsidiaries or affiliates and the Applicant? A. None.

Q. Describe the contacts, if any, which you have had with the North American Company, its officers, directors or employees since June 12, 1930.

A. The only contact that I have ever had with any of those officers was back in 1934. In September of that year Mr. Hockenbeamer and myself made a trip to New York City where we appeared as witnesses before the Board of Tax Appeals in connection with an appeal Western Power Corporation had taken against an asserted deficiency of the Commissioner of Internal Revenue involving the exchange of 1,825,000 shares of Pacific Gas and Electric Company common stock, for all of the common and preferred stock of the Great Western

(Testimony of E. W. Hodges.)

Power Company of California, San Joaquin Light and Power Corporation and Midland Counties Public Service Corporation, which was owned by the Western Power Corporation on June 12, 1930.

It was necessary to show that this exchange of stock constituted a tax free transaction under the applicable [477] provisions of the Income Tax Law and considerable testimony was introduced to show that a statutory reorganization had occurred.

A review of the Board of Tax Appeals Decision No. 72943 dated May 27, 1936, which held that the exchange of stock constituted a tax free transaction will indicate the extent of the testimony introduced.

Q. Did you appear as witnesses, that is, yourself and Mr. Hockenbeamer at the request of North American Company? A. We did.

Q. Did you appear merely as a convenience to them?

A. No. The matter was of vital importance to the Pacific Gas and Electric Company as well because if the transaction constituted a taxable transaction the Pacific Gas or its subsidiaries might have been subject to additional tax.

Q. Now, other than the contact which you have just recited have you had any contacts with officers or employees of the North American Company or its subsidiaries? A. None whatever.

Q. Have all of the outstanding bonds of the Pacific Gas and Electric Company been issued pur-

(Testimony of E. W. Hodges.)

suant to the order and authorization of the Railroad Commission of the State of California?

A. They have. [478]

Q. Have all of the shares of preferred stock of the Pacific Gas and Electric Company been issued and sold pursuant to the order and authorization of the Railroad Commission of the State of California?

A. They have.

Q. How much, or what proportion of the common stock of the Pacific Gas and Electric Company has been issued pursuant to the order and authorization of the Railroad Commission of the State of California?

A. My memory is that approximately 85 per cent of all of the common stock now outstanding has been authorized by the Railroad Commission of the State of California.

Q. That would mean, would it not, that approximately 15 per cent of the common stock of Applicant was issued and outstanding when the Public Utility Act of the State of California became effective in 1912? A. That is correct.

Q. So that it may be said that all of the presently outstanding bonds, all of the presently outstanding preferred stocks and all but 15 per cent of the presently outstanding common stock of Applicant had been issued pursuant to the order and authorization of the Railroad Commission of the State of California? A. That is correct.

Q. Will you state the approximate amount of

(Testimony of E. W. Hodges.)

the [479] public utility property now owned by Applicant, which has been either built or acquired by it pursuant to the order or authorization of the Railroad Commission since the effective date of the Public Utility Act?

A. It is approximately 80 per cent.

Q. The testimony which has already been introduced shows that the Pacific Gas and Electric Company represents a consolidation of approximately 400 separate utility company properties.

Is it a fact that the acquisition of all of the stocks of those companies and all of the physical properties of those companies, which have been acquired since the effective date of the Public Utility Act in 1912, have been acquired pursuant to the order and authorization of the Railroad Commission of the State of California? A. It is.

Mr. Phleger: I offer in evidence as Applicant's Exhibit 36 the following sheets, 7 separate documents which, for convenience, have been bradded together which respectively are headed as follows, and all of which have been prepared and are introduced at the request of counsel for the Securities and Exchange Commission: The first item "Pacific Gas and Electric Company, balance sheet, February 28, 1930".

Second sheet "Pacific Gas and Electric Company, Pacific Gas and Electric Company and subsidiaries companies, balance [480] sheets, February 28, 1930".

(Testimony of E. W. Hodges.)

Third sheet "Pacific Gas and Electric Company, balance sheet, June 30, 1930, Pacific Gas and Electric Company and subsidiary companies consolidated balance sheet, June 30, 1930 (after acquisition of capital stocks of subsidiary companies of Western Power Corporation)".

The next sheet "Pacific Gas and Electric Company and subsidiary companies, balance sheets, June 30, 1930".

The next sheet "Investments in capital stocks and bonds of subsidiary companies, June 30, 1930, Schedule 1" which is attached to the foregoing balance sheet.

The next sheet "Pacific Gas and Electric Company and subsidiary companies, balance sheets, all companies and consolidation, June 30, 1940."

The next sheet "Profit and Loss statement by companies and consolidation for the six months ended June 30, 1940."

Attached to the latter are the following separate sheets: "Balance sheet of Western Canal Company, June 30, 1940.

"Statement of profit and loss and surplus of Western Canal Company for 12 months period ended June 30, 1940."

Certificate thereto of Lawrence Scudder & Co., certified public accountants, dated February 14, 1940.

The next sheet "Vallejo Electric Light & Power Company, summary of income and surplus for the

(Testimony of E. W. Hodges.)

years ended December 31, [481] 1939 and 1938 and comparison."

Attached thereto is a sheet headed "Vallejo Electric Light & Power Company, condensed balance sheet, December 31, 1939 and 1938 and comparison."

The next sheet is headed "Pacific Gas and Electric Company, analysis of surplus years 1935, 1936, 1937, 1938 and 1939."

The certificate of Lawrence Schudder & Co., is applicable only to the balance sheet of the Vallejo Electric Light & Power Co.

The Examiner: In the absence of objection the documents as described by Mr. Phleger will be received in evidence and marked Applicant's Exhibits 36-A to M.

(The documents referred to were marked Applicant's Exhibit Nos. 36-A to 36-M, inclusive, and received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, you are familiar with the documents which have just been introduced in evidence, are you not? A. I am.

Q. They are full, true and correct statements of what they purport to be, are they?

A. They are.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 37 two sheets bradded together the first entitled [482] "Pacific Gas and Electric Company 6 per cent first preferred stock", the second sheet "5½ per cent first preferred stock."

(Testimony of E. W. Hodges.)

The Examiner: This next offer as described by counsel in absence of objection will be received in evidence and marked Applicant's Exhibit 37-A and B respectively.

(The documents referred to were marked Applicant's Exhibits Nos. 37-A and 37-B and were received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, has this exhibit been prepared by you or under your direction? A. It was.

Q. And are the facts thereon set forth true and correct? A. They are.

Q. State what the exhibit shows?

A. The first statement covering the 6 per cent first preferred stock shows the amount of stock issued by years from 1914 to 1939 inclusive, the number of shares issued and the proceeds realized therefrom, the number of shares that were issued for cash and the proceeds realized, the number of shares that were exchanged for the original preferred stock and the number of shares that were issued in exchange for stock of equal par value of the stocks of the California Telephone & Light Company, Western States Gas & Electric [483] Company, Coast Valleys Gas & Electric Company, Great Western Power Company of California, Feather River Power Company and San Joaquin Light & Power Corporation, also certain shares that were

(Testimony of E. W. Hodges.)

issued in connection with the acquisition of other property.

The statement shows that during that period of time there were 4,197,662 shares issued, and that the total proceeds obtained therefrom aggregated the sum of $97,853,150.

The figure I have just mentioned is reconciled with the total par value of the stock outstanding and the company's books or balance sheet of $104,941,550, and discount of $7,088,399.35, leaving a balance of $97,853,150.65.

The second statement covers the shares of 5-½ per cent first preferred stock which was first issued in 1929 and covers all subsequent issues to and including the year 1939. This statement shows that during that period there were 1,173,163 shares issued. The proceeds realized aggregated the sum of $29,267,122. There were 699,001 shares that were sold for cash, from which the proceeds aggregated the sum of $17,413,072.

There were 377,358 shares issued in exchange for the capital stocks of equal par value of the Great Western Power Company of California and Feather River Power Company, the aggregate par value of which was $9,433,950, and that there were 96,804 shares issued in exchange for an equal par [484] value of the stock of the San Joaquin Light & Power Corporation, the aggregate par value of which was $2,420,100.

Here again the total proceeds is reconciled with

(Testimony of E. W. Hodges.)

the par values appearing on the balance sheet as follows: A total par value issued $29,329,075 less discount of $61,952.97 and leaving proceeds realized of $29,267,121.

Q. Now, it is a fact, is it not, Mr. Hodges, that following the transaction in 1930 when the Applicant acquired stocks of the Great Western and San Joaquin and North American Company that the Great Western and the San Joaquin had outstanding in the hands of the public several millions of dollars of preferred stock?

A. That is correct.

Q. State by reference to this exhibit the manner in which the Pacific Gas and Electric Company acquired the outstanding preferred stocks of those companies.

A. Well, offers were made to the stockholders of the Great Western, Feather River Power Company and San Joaquin Light & Power Corporation, to exchange certain shares of the company's first preferred stock, and in certain instances some of its common stock for their holdings.

Q. And the result was, was it not, that Pacific Gas and Electric Company issued its own preferred stocks and some common stock also?

A. That is correct. [485]

Q. In the acquisition of the shares of Great Western and San Joaquin which had not been owned by the North American Company?

A. That is correct.

(Testimony of E. W. Hodges.)

Q. I call your attention to Applicant's Exhibit 30. That exhibit shows the total preferred and common stock of Applicant outstanding during the period 1930-1940.

Is it a fact, Mr. Hodges, that some of the additional shares of preferred and common stock issued in that period was issued in exchange for stock of the San Joaquin and Great Western Companies which had not been acquired from the North American Company? A. It is.

Q. Now, by reference to that statement, which you will note shows an increase in the number of shares of stock owned by the North American Company from 1,855,238 shares as of December 31, 1930, to 2,075,455 shares as of the succeeding December 31, how did that increase come about?

A. I believe probably the entire increase there was due to the right offering—the par offering of common stock to the common stockholders during the year 1931.

Q. That is to say, that during that year the North American Company purchased a number of shares of common stock of Applicant which it was entitled to purchase by virtue of being a common stockholder in Applicant because of an offer [486] by Applicant to all of its stockholders of rights to subscribe to its common capital stock?

A. That is correct.

Q. Now, you will note that there has been continuously since June 12, 1930, a decline in the rela-

(Testimony of E. W. Hodges.)

tive percentage of the total voting stock of applicant held by the North American Company, the decrease being from a maximum in 1930 of 19.89 per cent to the present percentage of 17.71 per cent.

Can you state what has brought about that decrease in percentage?

A. I would say it would be entirely due to the additional common preferred stock of the Pacific Gas and Electric Company that was issued in exchange for the preferred stock of the Great Western and San Joaquin Corporation held by other stockholders, stockholders other than the North American Company.

Q. Well, it is obvious, Mr. Hodges, that that is true as to principal amount, but it is also true, is it not, that a portion of the decline has come about through the actual disposition by North American Company of some of its shares of stock?

A. It indicates that they have disposed of some part of their holdings, yes.

Q. Yes. A. That is correct. [487]

The Examiner: Where is that shown on this Exhibit 30?

Mr. Phleger: That is the maximum number of shares of stock of this company owned by North American Company on December 31, 1934, being 2,077,055 shares.

The Examiner: Oh, I see. You are referring to the total column rather than the North American Company?

(Testimony of E. W. Hodges.)

Mr. Phleger: I am referring to the North American and its affiliated subsidiary interests.

The Examiner: All right.

By Mr. Phleger:

Q. So that of today, or rather as of July 31, 1940, the total holding of the North American and its subsidiaries and affiliates is 2,059,670 shares; that is correct, is it not, Mr. Hodges?

A. It is.

Q. That came about, did it not, through the disposition of some of the shares owned by subsidiary and affiliated companies rather than through by North American Company itself?

A. Yes sir.

Q. Mr. Hodges, also in explaining the relative decrease in the percentage of voting stock held by the North American Company, it is a fact, is it not, that any sales of preferred stock for cash during that period would also have an effect upon that percentage? A. That is correct. [488]

Q. And I believe it is true, is it not, that there was one sale of preferred stock for cash some $5,000,000 during that period?

A. That is correct.

Q. So that the decrease in the relative percentage of voting stock of the company has come about through the exchange of preferred stock for stock of San Joaquin and Great Western, through the sale of preferred stock for cash and through the

(Testimony of E. W. Hodges.)

disposition by some of the affiliated and subsidiary companies of North American of some of their stock? A. That is correct.

Mr. Phleger: I will offer in evidence as Applicant's Exhibit 38 a sheet headed "Pacific Gas and Electric Company, summary of bond refunding operations during period January 1, 1930, to September 30, 1940."

Mr. Gerdes: Off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: In the absence of objection this document just described will be received in evidence as Applicant's Exhibit 38.

(The document referred to above was marked Applicant's Exhibit No. 38 and was received in evidence.) [489]

By Mr. Phleger:

Q. Mr. Hodges, Exhibit 38 was prepared under your direction, was it not? A. It was.

Q. And it is true and correct? A. It is.

Q. Will you state what it shows?

A. Well, generally it shows that during the period from August 1930 to October of 1936 that the company sold three hundred million dollars par value of its first refunding mortgage bonds from which it realized $397,312,500, and that from the proceeds from the sale of these bonds together with certain treasury funds it redeemed $285,962,600 par

(Testimony of E. W. Hodges.)

value, the cost of redeeming aggregating the sum of $298,550,772.

The Examiner: Does that include interest?

The Witness: No, that does not include interest; that is just the redemption price.

By Mr. Phleger:

Q. Have all of the bonds issued by the company during that period been issued under a single bond mortgage? A. They have.

Q. And the issues which have been redeemed have been not only issues of Applicant but also the issues of subsidiary corporations which bonds were outstanding when the properties [490] of those corporations were acquired by the Pacific Gas and Electric Company? A. That is correct.

Q. So that during that entire period the company has been simplifying its bond structure by retiring the bonds of subsidiary companies, or bonds outstanding on acquired properties and issuing, to obtain the funds required therefor, bonds under its own mortgage? A. That is correct.

Mr. Phleger: I will offer as Applicant's Exhibit 39 a statement headed "Pacific Gas and Electric Company and subsidiaries, statement showing security issues held by public as of dates shown below."

The Examiner: This schedule will be received in evidence and marked Applicant's Exhibit 39.

(Testimony of E. W. Hodges.)

(The statement referred to was marked Applicant's Exhibit No. 39 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you cause Exhibit 39 to be prepared and is it true and correct? A. It is.

Q. Will you state generally what it shows?

A. The statement shows security issues held by the public and amounts outstanding as of December 31, 1930, and as of June 30, 1940. [491]

At the bottom of the statement it is indicated that as of December 31, 1930 there were 61 bond issues outstanding.

The Examiner: Security issues?

The Witness: Security issues, yes, right, and that as of June 30, 1940, that had been reduced to a total of 10.

By Mr. Phleger:

Q. That is to say, that during that 10 year period the company has simplified its corporate structure so that as of today it has but one bond mortgage outstanding, but two issues of preferred stock and but one issue of common stock, is that right? A. There are——

Q. (interposing) I am talking about the P. G. & E. itself.

A. Well, but the San Joaquin Light & Power Corporation bond issue has been assumed by Pacific Gas & Electric Company.

(Testimony of E. W. Hodges.)

Q. Well, I will ask you that in a moment. The company itself has but one bond mortgage outstanding, two issues of preferred stock and one of common stock, is that correct?

A. That is correct.

Q. And how many bond issues has it outstanding of other companies which it has assumed?

A. One.

Q. So that the company's structure is now that it has but one bond mortgage itself, has assumed one mortgage of an [492] acquired company, has two preferred stock issues, and one common stock issue?

A. It has assumed more bond issues than one company, than the one that you speak of, but there is only the one issue now outstanding.

Q. Now outstanding, yes. A. Correct.

Q. I have referred, Mr. Hodges, to two issues of preferred stock. The fact is that there has been one issue having two different dividend rates?

A. That is correct.

Q. In all other respects except dividend rate the issue is identical as to priority, position and otherwise? A. Correct.

The Examiner: That would appear from the articles of incorporation, would it not?

Mr. Phleger: Yes. I wanted to correct my terminology of two preferred issues, which was not quite accurate.

The Examiner: Unless, as you say, the articles

(Testimony of E. W. Hodges.)

show that there might be an assumption there were two different issues, because they have—oh, no, they are titled the same. I thought one was prior preferred and the other just preferred.

Mr. Phleger: No, the company has but one type which is first preferred. [493]

The Examiner: First preferred, 5½ and 6.

Mr. Bosley: This is off the record.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: On the record again.

Mr. Phleger: I offer as Applicant's Exhibit 39——

The Examiner: 40 will be the next number, I believe, Mr. Phleger.

Mr. Phleger: Right.

The Examiner: 39 is this schedule you just discussed.

Mr. Phleger: That is right, 40. A statement headed "Pacific Gas and Electric Company and subsidiary companies, statement showing outstanding bonds, preferred stock, common stock and surplus, as of the dates shown below."

The Examiner: This compilation consisting of three pages will be received in evidence and marked, in the absence of objection, Applicant's Exhibit 40.

(The document referred to above was marked Applicant's Exhibit No. 40 and was received in evidence.)

(Testimony of E. W. Hodges.)

By Mr. Phleger:

Q. Mr. Hodges, was Exhibit 40 prepared under your direction? A. It was.

Q. And the facts set forth there are true and correct, [494] are they? A. They are.

Q. Will you explain what the exhibit shows.

A. The statement shows the amounts of outstanding bonds, preferred stock, common stock and surplus as of December 31, 1919; December 31, 1924; December 31, 1929; December 31, 1934, and December 31, 1939, and shows the respective amounts outstanding and the percentage of each to the total amount as of the end of each of those years.

For the year December 31, 1919, for instance, the surplus account aggregated the sum of $5,868,331 and represented 3.74 per cent of the total amount.

The common stock amounted to the sum of $34,004,058 and was 21.67 per cent of the total.

The preferred stock aggregated the sum of $30,049,580 and was 19.15 per cent of the total.

The bonds aggregated the sum of $87,002,406, and represented 55.44 per cent of the total.

As of December 31, 1939 the corresponding amounts outstanding were as follows: Surplus $51,465,607 or 8.17 per cent of the total; common stock $156,570,125 or 24.87 per cent of the total; preferred stock $134,270,625 or 21.32 per cent of the total, and bonds $287,345,000 or 45.64 per cent of the total.

(Testimony of E. W. Hodges.)

Q. The exhibit shows, does it not, Mr. Hodges, a very [495] substantial improvement in the capital structure of the company over the 20 year period? A. It does.

Q. It shows that the percentage of borrowed money to the total outstanding securities and surplus has decreased from 55.44 per cent in 1919 to 45.64 per cent in 1939, is that right?

A. That is correct.

Mr. Phleger: I will offer as Applicant's Exhibit 41 a statement headed "Pacific Gas and Electric Company and subsidiary companies, earnings for and dividends paid on Pacific Gas and Electric Company preferred and common stocks 1920 to 1939 inclusive."

The Examiner: The statement will be received in evidence and marked Applicant's Exhibit 41.

(The statement referred to above was marked Applicant's Exhibit No. 41 and was received in evidence.)

By Mr. Phleger:

Q. Mr. Hodges, did you cause Exhibit 41 to be prepared? A. I did.

Q. Are all of the facts therein set forth true and correct? A. They are. [496]

Q. Will you state briefly what it shows.

A. The statement shows for each year from 1920 to 1939 inclusive the earnings available for the preferred and common stock of Pacific Gas and Elec-

(Testimony of E. W. Hodges.)

tric Company, the dividends paid on the preferred stock, the balance available for the common stock, and the amount per share and the amount of dividends paid on the common stock for each year and the amount per share.

Mr. Phleger: I will offer now as Exhibit 42 a statement headed "Table showing all securities issued by Pacific Gas and Electric Company since its incorporation which was sold to an underwriter or underwriting syndicate and the respective participation of each such underwriter."

This exhibit was prepared at the request of counsel for the Securities and Exchange Commission.

The Examiner: Off the record.

(Discussion outside the record.)

The Examiner: On the record.

The schedule just described by Mr. Phleger consisting of three sheets of paper will be received in evidence, in the absence of objection, and marked Applicant's Exhibit 42.

(The document referred to was marked Applicant's Exhibit No. 42 and was received in evidence.) [497]

By Mr. Phleger:

Q. Was this prepared under your direction, Mr. Hodges, and are the facts therein set forth true and correct?

A. It was, and they are.

(Testimony of E. W. Hodges.)

Q. Will you explain what the exhibit shows?

A. The exhibit shows all securities issued by Pacific Gas and Electric Company since its incoration which were sold to an underwriter or underwriting syndicate, and the respective participation of each such underwriter.

The first securities sold in which there is an underwriting participation occurred during the years 1908 to 1911 representing the California Gas & Electric Corporation unifying refunding mortgage 5 per cent bonds, par value 15,074,000, the underwriter in that instance being N. W. Halsey & Company and then the statement goes on to list the other securities that had been sold in all subsequent years down to and including the present time.

The Examiner: Well, is that as far as you are going with the explanation of this exhibit?

Mr. Phleger: I think so.

The Examiner: May I ask this question, then? On the first page of this exhibit I notice at the bottom a schedule of underwriters with a number of firms named and their participation.

Does that refer only to this last issue of 45,000,000 [498] in April 1935?

The Witness: That is correct, yes.

The Examiner: I see. All right.

By Mr. Phleger:

Q. Mr. Hodges, has the company a pension plan?

(Testimony of E. W. Hodges.)

A. It has.

Q. Will you describe very briefly its nature?

A. The present retirement plan, or pension plan of the company, was adopted and became effective as of January 1, 1937. All employees with one year or more of service were eligible to join this plan.

It is a contributory plan in that the employees pay part of the cost and the company pays the balance. The relative ratio is that the company pays approximately twice as much as the employees do.

The plan provides for benefits to employees for both past and future service; that is, service prior to January 1, '37, and service subsequent to December 31, '36.

For service prior to January 1, '37, the company pays the entire cost; for service subsequent to December 31, '36, both the company and the employee contribute to the cost of the plan. The contribution of the employee is 2 per cent of his earnings up to $3,000 per annum and 4 per cent on any earning in excess of that amount.

The benefits to the employee for services rendered [499] subsequent to December 31, '36 are 1 per cent of all earnings on which he has made contributions during that period.

I might, for the purpose of example, show what the benefits to an employee is under the plan.

As just an example given in the retirement plan, a man with 15 years of past service, who joins

(Testimony of E. W. Hodges.)

the plan January 1, 1937 at age 50 and works until age 65 will retire with 15 years of past service and 15 years of future service. If, during this period he has continuously received a salary of $150 monthly his retirement income will amount to the sum of $78.75 per month commencing at age 65.

That amount, I may state, includes his social security benefits under the Social Security Act.

The Examiner: Would that be for life or for 15 years?

The Witness: That would be for life. He would receive the $78.75 income, monthly income from 65 years, from the time he becomes 65 until his death.

By Mr. Phleger:

Q. Mr. Hodges, referring to Exhibit 42, what is the first security issue for which the company filed a registration statement under the Sesurities Act?

A. The first refunding mortgage funds, Series G 4's that were issued and sold in April of 1935, $45,000,000.

Q. Was that one of the first registration statements filed by any public utility under the Securities Act? [500]

A. After the amendment of that Act it was. It was one, I believe, either the first, or at least, the second.

The Examiner: You said the Securities Act of 1933. That is what you meant, isn't it?

(Testimony of E. W. Hodges.)

Mr. Phleger: Yes.

The Examiner: This was in 1935.

Mr. Phleger: I think that is all.

The Examiner: Can we have a short recess before you start your cross examination, Miss Calkin?

Miss Calkin: All right.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

[501]

The Examiner: Can you think of any more questions, Mr. Phleger?

Mr. Phleger: I have finished.

Cross Examination

By Miss Calkin:

Q. Mr. Hodges, could you describe the distinction between your duties and the duties of Mr. Foote, as Treasurer of the company?

A. Mr. Foote has the control and custody of any securities owned by the company and of the company's cash.

My Jurisdiction is limited to the approval of the expenditures made by the company.

Q. Do you work on the preparation of registration statements for the issuance of securities by the Applicant? A. I do.

Q. Is that done primarily by your department?

A. It is.

(Testimony of E. W. Hodges.)

Q. In connection with the preparation of registration statements for securities issued by your company since 1935, have you worked with representatives of the North American Company in the preparation of those statements? A. No.

Q. With what members of the personnel of the North American Company are you acquainted?

A. At the time of our visit there in 1934 I met Mr. [502] Fogarty, and Mr. Black at that time, and Mr. Preger, their comptroller.

Q. Was that your first acquaintance with Mr. Black?

A. No. I had met Mr. Black at the time the company acquired the stock of the Great Western and San Joaquin in 1930.

Q. What contacts did you have with Mr. Black from the time you first met him until the time he became president of the Applicant?

A. Outside of meeting him in New York in 1934 that was the only contact that I had ever had.

Q. Had you had any further contacts with Mr. Fogarty, or Mr. Preger, other than that meeting in 1934?

A. I believe that I met Mr. Fogarty here in San Francisco once, or possibly twice, on one of his visits here.

Q. On those occasions what was the extent of your discussion of the affairs of the Applicant with Mr. Fogarty? A. None whatsover.

(Testimony of E. W. Hodges.)

Q. Who has charge of the accounting department of the North American Company, if you know?

A. I do not know. I suppose it comes under Mr. Preger.

Q. Have you ever met a Mr. Sealey, of the North American Company?

A. No, I have not.

Q. Have you ever had any correspondence with Mr. [503] Preger concerning matters pertaining to either the North American Company or the Applicant?

A. Each year I receive a letter from Mr. Preger in which he asks us to certify as to the book value per share of the common stock and we give him that information.

Q. Is that the extent of your correspondence with Mr. Preger?

A. That is the extent of our correnpondence; yes.

Q. Have you ever had any telephone communications with any representatives of the North American Company. A. Never.

Q. Have you consulted any representatives of the North American Company with reference to tax matters of the Applicant?

A. Never, but the one that I mentioned in 1934. That was really not our tax matter, although it was indirectly involved.

(Testimony of E. W. Hodges.)

Q. But that is the only occasion that you had any contacts with them on the tax problems?

A. The only occasion.

Q. Do you have tax experts in your own employ?

A. Pardon?

Q. Does the Applicant have tax experts in its employ?

A. No. I handle the tax matters primarily myself.

Q. Do you sometimes employ outside tax experts. [504] A. We have; yes.

Q. Have those been employed on the recommendation of the North American Company?

A. No.

Q. Have you received the assistance of any representatives of the North American Company in making out reports to regulatory bodies?

A. Never.

Q. I believe you testified that acquired properties had been set up on the Applicant's books on the basis of historical cost less accrued depreciation, is that correct?

A. I believe my testimony was to the effect that the over-all plant account, as it appears on the books of the P. G. & E., represents the cost to the company of the properties acquired.

Q. If the cost of acquisition exceeds the historical cost less depreciation to what account would that difference be charged?

(Testimony of E. W. Hodges.)

A. Under the classification of accounts for electrical corporations, effective January 1, 1938, if the cost exceeds the so-called original cost of the property, the difference is supposed to go in the Acquisition Adjustment Account, which is a part of the Plant Account.

Q. What is your Account No. 102-½?

A. It corresponds to the Acquisition Adjustment [505] Account in the present classification of accounts.

Q. Has it been sometimes designated as the cost of acquisition of properties in excess of historical cost of properties acquired?

A. It has and is so designated.

Q. If the cost of acquisition is less than the original cost less depreciation what account would be credited with the difference?

A. It should go to the same account.

Q. Is this method prescribed by the Railroad Commission in the handling of cost of acquired properties?

A. It is; it has so been prescribed since January 1, 1938.

I might state in that respect that the classification that became effective January 1, 1938 provides for a re-classification of the company's entire plant accounts as of that date on a basis of original cost; and if that original cost was more or less than the cost to the company of the acquired properties

(Testimony of E. W. Hodges.)

that the difference shall be debited or credited to this Acquisition Adjustment Account.

Q. What reports, if any, do you, as Comptroller of the Applicant, send to the North American Company? A. None.

Q. Do you have any knowledge as to what reports are sent by other departments of the Applicant? [506] A. No.

Q. Have you ever conferred with any representatives of the North American Company regarding the maintenance and depreciation policy of the Applicant? A. Never.

Q. To your knowledge have any representatives of the Applicant conferred with any representatives of the North American Company in regard to the maintenance and depreciation policy?

A. Not to my knowledge.

Q. Will you refer to Applicant's Exhibits Nos. 12 and 13? A. Yes.

Q. You are familiar, I assume, with the investments of the Applicant? A. I am.

Q. Now, does Applicant's Exhibit No. 13 correctly list all of the investments or, rather, all of the securities owned by the Applicant in any public utility company or in any registered holding company?

A. It states to include any securities issued by any public utility or holding company.

(Testimony of E. W. Hodges.)

The Examiner: That includes all of such securities?

The Witness: It does. [507]

By Miss Calkin:

Q. You know of no securities owned by the Applicant and issued by any registered holding company, or any subsidiary thereof, other than those set forth in Applicant's Exhibit No. 13?

A. No, I do not.

Q. And does Applicant's Exhibit No. 12 show all of the securities—scratch that.

In the preparation of Applicant's Exhibit No. 12 what companies were considered as subsidiaries of the Applicant, if you know?

A. The San Joaquin Light & Power Corporation, Valley Electrical Supply Company, Arlington Properties Company, Ltd. and Western Canal Company.

Q. Were companies in which the Applicant had only an excess of a 50 per cent ownership included?

A. They are in those that I have named; yes.

Q. What about Applicant's investment in companies in which it owns less than 50 per cent, are there any substantial investments other than those shown in Applicant's Exhibit No. 12?

A. None.

Q. Does Applicant's Exhibit No. 12 list its holdings of the securities of all companies in which it owns in excess of 10 per cent interest? [508]

A. Yes, it does.

(Testimony of E. W. Hodges.)

Q. I believe you testified that all of the outstanding bonds of the Applicant have been issued under one indenture, presently outstanding bonds?

A. Well, with the exception of this assumed issue of the San Joaquin Light & Power Corporation.

Q. The bonds originally issued by the Applicant that are now outstanding were all issued under one indenture? A. Correct.

Q. What is the provision in that indenture relating to the issuance of additional bonds?

A. Well, they may be issued for additions and betterments, and property acquisitions, and so on, if approved by the trustee of the montgage.

Q. Do you know what percentage of bonds can be issued against property additions and betterments?

A. 75 percent, 75 percent par value.

Q. Does the indenture which secures the outstanding bonds contain any regulation on dividend payments by the Applicant?

A. Not to my knowledge.

Mr. Bosley: I may answer that there is one provision, which is utterly unimportant. In the event—I can't remember the exact language of it—but it was to the effect that dividends should not be paid out of some prior earnings. I [509] can't remember the exact language, but there is a short paragraph that has been shown in all of the registration statements. It had to do with the earnings prior, I think,

(Testimony of E. W. Hodges.)

to the date of the mortgage, but I am not quite certain.

Miss Calkin: The date of the mortgage is?

Mr. Bosley: December 1, 1920.

I cannot remember the exact language of that, but there is a short paragraph that had to do with some declaring of dividends out of earnings prior to some date specified there.

By Miss Calkin:

Q. What are the provisions, if any, in the indenture relating to maintenance and depreciation?

A. I don't recall the specific provisions at the moment; other than I believe it does require that such expenditures shall be in accordance with those approved by the regulatory commissions.

Mr. Bosley: There is a provision designed to accomplish the same object as a depreciation reserve. It is called a general reserve fund. The company is required to submit a report annually to the trustee showing its expenditures for maintenance, for replacements and for retirements of bonds of certain kinds. It is required to set up a fund equal to a specified percentage of, I think, its gross income.

The Witness: Outstanding bonds.

Mr. Phleger: May I make this suggestion: We are [510] speculating about a fact and really testing memories about something that is easy to show. If

(Testimony of E. W. Hodges.)

you are interested we will be glad to endeavor to introduce in evidence a copy of the indenture.

The Examiner: A copy of the indenture is already in the files of the Commisson in connection with the registration statement.

Mr. Phleger: That is right.

Mr. Bosley: Its general reserve fund may be used for additions and betterments, if it is not required for replacements, to which a certain amount must be credited each year. The amount there is this specified percentage less the amount of the actual expenditures for maintenance and replacements.

Miss Calkin: Is it agreeable with counsel for the Applicant that the indenture which has been filed in connection with the registration statement of Applicant be incorporated by reference in this record?

Mr. Phleger: May I have that question read?

(The question referred to was read by the reporter as above recorded.)

Mr. Phleger: That is agreeable, but may I make this suggestion: —

The Examiner: I suppose that includes any supplement or amendment to that indenture, if any?

Miss Calkin: Yes. [511]

Mr. Phleger: Yes. In lieu of that may it be stipulated that either party may incorporate in its brief, or otherwise, references to the filed mortgages

(Testimony of E. W. Hodges.)

or supplements with the Commission and the portion so recited shall be deemed to be part of the record? That will diminish the record.

Miss Calkin: That is agreeable.

The Examiner: I think the Commission can take judicial notice of its own file and, in order to diminish the record, I think that is a good idea.

Miss Calkin has indicated her concurrence and that will appear in the record as a stipulation to that extent.

By Miss Calkin:

Q. Do you have available the ratio of the funded debt to Applicant's depreciated property account?

A. We have a balance sheet here of June 30, 1940, do we not?

Mr. Gerdes: Yes.

A. (continuing) The total funded debt outstanding in the hands of the public, as of June 30, 1940, aggregated the sum of $286,705,000.

The total plant account, as of that same date, was the sum of $731,346,410.

You spoke of the depreciated plant account, and as of that same date the depreciation reserve was $121,868,438.

So the ratio you speak of would be the amount of the [512] plant account less the amount of the depreciation reserve, and that difference divided into the bonds outstanding in the hands of the public of $286,705,000 of that date.

(Testimony of E. W. Hodges.)

By Miss Calkin:

Q. What percentage would that be?

A. (Making calculation).

Mr. Phleger: 46 percent.

A. 46 percent—47 percent.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. May I suggest, Mr. Hodges, there is no logical relationship between the bonded indebtedness of the company and the difference between its plant account and its depreciation reserve, is there?

A. I can think of none.

Mr. Phleger: That is all.

Miss Calkin: Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

Mr. Phleger: That is all.

The Examiner: If there are no further questions the witness is excused.

(Witness excused.) [513]

Mr. Phleger: I will call Mr. Miller.

Whereupon—

C. O. G. MILLER

was produced as a witness by and on behalf of the

(Testimony of C. O. G. Miller.)

Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Where do you reside, Mr. Miller?

A. San Francisco.

Q. Where were you born?

A. San Francisco.

Q. Have you resided in California ever since?

A. Yes. It has been my legal residence.

Q. When did your family first come to California?

A. My grandfather came in 1849; my father in 1851.

Q. And has your family—by that I mean your parents and so forth—been residents in California since that time? A. Yes, sir.

Q. What position do you hold with the Pacific Gas and Electric Company?

A. I am a director and member of the Executive Committee.

Q. What other corporations are you connected with?

A. Pacific Lighting Corporation, American Trust Com [514] pany, Fireman's Fund Insurance Company, Fireman's Fund Indemnity Company, Occidental Insurance Company—

The Examiner: Life?

The Witness: Occidental Insurance Company—

(Testimony of C. O. G. Miller.)

without the "Life". Also the Soundview Pulp Company.

I think that is all of any size.

By Mr. Phleger:

Q. Are you a director of the Railway Equipment and Realty Company? A. Yes.

Q. Are you a director of the Southern California Gas Company? A. Yes.

Q. And of the Southern Counties Gas Company?

A. I think I am not a director of the Southern Counties Gas Company now.

Q. With the exception of the American Trust Company and the Pacific Lighting Company, are you an officer of any of those companies, other than a director?

A. I am Chairman of the Executive Committee of the American Trust Company, and a member of the Finance Committee of all of the Fire Insurance Companies.

Q. And you are Chairman of the Board of the Pacific Lighting Company? A. Yes.

Q. Are you a member of the Trust Committee of the [515] American Trust Company?

A. Yes.

Q. What are the duties of that Committee?

A. Every trust is reviewed ever so often—I am not quite sure what the time is—and the investments are looked into and discussed, and the sales of securities held in the trust and purchases are all approved by the Trust Committee.

(Testimony of C. O. G. Miller.)

Q. And as a member of that Committee do the holdings by American Trust Company, as trustee, and otherwise in the Pacific Gas and Electric Company, come before you for review?

A. They do.

Q. Are you an officer of Stanford University?

A. I am a trustee. I am Chairman of the Finance Committee, and Chairman of the Investment Committee.

Q. All of these companies which you have mentioned as being associated with are California companies, are they not? That is to say, their principal business is located in California? A. Yes.

Q. Are you an officer or a director of any corporation whose principal business is outside the State of California, other than the Soundview Pulp Company?

A. No, not that I know of.

Q. And the Soundview Pulp Company, while its proper- [516] ties are outside the State, has its principal office in San Francisco, does it not?

A. Yes; and is owned here.

Q. When did you first become connected with a public utility? A. December 1, 1883.

Q. What was that company?

A. United Gas Improvement Company of Philadelphia.

Q. Will you state where the properties of that company were located?

(Testimony of C. O. G. Miller.)

A. Well, the ones with which I was immediately interested were in San Francisco. They did own a large number of gas companies and electric companies, and still do, throughout the United States. I think it is the oldest holding company in the country, the United Gas Improvement Company.

Q. What position did you occupy with the United Gas Improvement Company?

A. I was cashier in the San Francisco office.

Q. What became of the United Gas Improvement Company properties in San Francisco?

A. They, within about a year sold them to the Pacific Gas Improvement Company, a local corporation, which was formed to purchase them.

Q. Who formed the Pacific Gas Improvement Company? A. My father. [517]

Q. Did you become an officer of that company?

A. Yes. In 1886 I became the Treasurer. I was later Secretary and Treasurer, and on my father's death in 1900 I became President.

Q. Did the Pacific Gas Improvement Company consolidate with other utility companies in San Francisco?

A. Yes. In 1903 they consolidated with the San Francisco Gas & Electric Company and I became a director of that company.

Q. Did you become a stockholder also in that company? A. Yes.

Q. And were you active in its affairs?

(Testimony of C. O. G. Miller.)

A. Yes. I was a member of the Executive Committee.

Q. When did you first know of the Pacific Gas and Electric Company?

A. I am not quite sure because I am not quite sure when it was formed.

Mr. Bosley: It was organized October 5, 1905.

The Witness: Well, I knew of it within a few days of that time. I may have known of it before hand. I am not sure.

By Mr. Phleger:

Q. State what transactions you had directly or indirectly with that company soon after its formation?

A. The company was formed to buy the properties of the San Francisco Gas & Electric Company and towards the end [518] of 1905 an agreement was reached for the sale of the property. I had been—

Mr. Bosley (interposing): A sale of the property or sale of the stock?

The Witness: It was the sale of the stock. In effect, it was a sale of the property. They took the property. There was stock, of course.

I thought I had been a very long while in the gas and electric business then, only 35 years ago, and having been since I was a boy in the gas and electric business in San Francisco, I thought I must have some interest in it. There was no common stock of the Pacific Gas and Electric Company

(Testimony of C. O. G. Miller.)

available. I bought 100 shares of the preferred stock of the California Gas & Electric Corporation, which was a subsidiary, so I should not lose my continuity of interest in the company.

That was afterwards changed to the Pacific Gas and Electric preferred.

By Mr. Phleger:

Q. And you have held that stock ever since the formation of the company?

A. No. That stock I sold many years ago. It was preferred stock.

Q. With respect to your holdings in the San Francisco Gas & Electric Company, what became of them?

A. We received for the stock $65 a share in Pacific [519] Gas and Electric Company collateral 5 percent bonds and $25 a share in cash.

Q. Now, we will go to another subject. When was the Pacific Lighting Company formed, of which you are now the Chairman of the Board?

A. August 24, 1886.

Q. What business did it undertake?

A. Operating small gas and electric companies throughout the State.

Q. Where were its plants located in the early days?

A. Santa Rosa, Eureka, San Bernardino, Colton, Riverside, and afterwards in Ventura; and, in 1889, Los Angeles.

(Testimony of C. O. G. Miller.)

Q. When did the Pacific Lighting Company first purchase stock in the Pacific Gas and Electric Company?

A. I am not sure of the exact time. I think it was in 1910.

Q. State how that stock was acquired.

A. I called on Mr. Frank Drum, the president of the company, whom I had known for many years, and told him—I knew the company had treasury stock and I knew that they wanted money—and I told him I would like to have my company interested in the Pacific Gas and Electric Company; that if it was agreeable to him we were prepared to buy a large block of stock.

He said he would think it over. Frank was never in a hurry. In about ten days he said they were ready to do [520] business, and we agreed upon a price and bought the stock.

Q. That was the initial purchase by the Pacific Lighting Company in 1910 of 5,000 shares?

A. Yes; of the old stock.

Q. Has the Pacific Lighting Company since that date purchased additional shares from time to time?

A. Yes.

Q. When did it become the largest individual stockholder in the company?

A. I am not sure, but I think in 1912 or 1913.

Q. And how long did it continue to be the largest individual stockholder?

A. It was the largest stockholder until the

(Testimony of C. O. G. Miller.)

Byllesby interest sold their Western States—I think it was but I can't remember the exact name —Western Gas & Electric, or Western States Gas & Electric, to the Pacific Gas, and took in payment 275,000 shares of stock. I think it was 275,000 shares.

Mr. Bosley: 260,000.

By Mr. Phleger:

Q. That was in 1927?

A. Yes; about that time. Was it as late as that? I think at that time we had about 100,000 shares, but I am not sure.

Q. Is the company now the third largest, your company, [521] the third largest stockholder in Pacific Gas and Electric Company?

A. I think so.

Q. When did you first become a director in the Pacific Gas and Electric Company?

A. I am not sure of the time. The time we bought the large interest Mr. Drum stated he would like very much not to ask anyone to resign and asked me if I cared whether I was elected a director immediately, and I told him I would wait until there was a vacancy. There was a vacancy within a year or two and I became a director then.

Q. Would you say that you became a director about 1912? A. Not later than that.

Q. When did you become a member of the Executive Committee?

(Testimony of C. O. G. Miller.)

A. I am not quite sure, but I think it was in 1913.

Q. Who constituted the Executive Committee of the company in 1913?

A. The first Committee was Frank B. Anderson, then president of the Bank of California, and myself. My impression is that Mr. Drum was not a member, but I am not sure.

Mr. Bosley: He was president at that time.

The Witness: I don't think he was a member. [522]

By Mr. Phleger:

Q. Mr. F. B. Anderson continued as a member of the Executive Committee until his death many years later, did he not?

A. Yes, sir; until 1935 when he died.

Mr. Bosley: Except for occasional interruptions when he was absent and Mr. McIntosh took his place.

The Witness: Once or twice we took a number of long trips with the Andersons, and once or twice he would resign and Mr. McIntosh, then chairman of the Bank of California, took his place.

By Mr. Phleger:

Q. I show you, Mr. Miller, Applicant's Exhibit 32, and refreshing your memory from it, will you state the number of shares of company stock which you own yourself?

A. I own 100 shares of the First Preferred and 7,500 of the common.

(Testimony of C. O. G. Miller.)

Q. Also refreshing your recollection, will you state the number of shares of stock which are owned by your family?

A. I made a trust with the Bank of California some years ago and put in 3,000 shares of Pacific Gas and Electric, common, in it.

One of my daughters has 1,600 shares of the common.

The other daughter has 420 common and 290 preferred.

My son has 1,200 shares of the common. [523]

My four grandsons have together 670 shares.

Q. How many shares has the Pacific Lighting Corporation? A. 131,900.

Q. Will you state the number of shares which the American Trust Company has in various capacities as agent, trustee and otherwise?

A. 24,281 shares of preferred stock, and 25,162 shares of common stock.

Q. How many shares of stock does the Firemen's Fund Insurance Company and associated companies hold?

A. 12,800 shares of the preferred, and 4,652 shares of the common.

Q. Do you know whether or not Stanford University owns and holds a substantial number of shares of the company?

A. Yes. I cannot remember how much it is. I

(Testimony of C. O. G. Miller.)

think they have $500,000 in bonds, or more, Stanford University.

Q. In addition to the stock? A. Yes.

Q. Who were the individuals who were prominent in the affairs of the Pacific Gas and Electric Company in the years immediately after its incorporation?

A. Frank Drum was most active. Pardon me—from the time of its incorporation?

Q. Yes. In 1905. [524]

A. That is a different story. Eugene de Sabla and John Martin were the two most active men.

Q. And following their period of chief activity who were the most active figures?

A. Frank Drum. Mr. John A. Britton was very active, but Frank Drum, after the first difficulties of 1907, 1908 and 1909, predominated.

Q. Did the company have difficulties early in its career? A. Many.

Q. Were they caused in part by the fire in San Francisco in 1906?

A. That helped. I think the principal reason was they put out more money than they took in.

The Examiner: That is the first time I ever heard a fire referred to as helping anybody.

The Witness: It increased our difficulties.

By Mr. Phleger:

Q. Have you been a regular attendant at the meetings of the Executive Committee of the company?

(Testimony of C. O. G. Miller.)

A. Yes; always when I have been in the city.

Q. Is the same thing true with respect to directors' meetings? A. Yes.

Q. Have you ever hesitated to freely and fully express [525] your views at the meetings of either the Executive Committee or the Board of Directors?

A. No; only when restrained by the rules of good behavior.

Q. Were you acquainted with Mr. Frank Dame?

A. My impression is I never met him. I knew well who he was.

Q. Did you ever have any communication with him that you can recall? A. No.

Q. Did you know Mr. Edwin Gruhl?

A. No.

Q. Did you ever have any communication with him? A. None that I know of.

Was Mr. Gruhl a director?

Mr. Bosley: Yes.

The Witness: I may possibly, I may have met him at the directors' meeting, but I have no recollection of it.

Mr. Bosley: According to the evidence he never attended any directors' meetings.

The Witness: Then I didn't meet him.

By Mr. Phleger:

Q. Are you acquainted with F. W. Doolittle?

A. I think I have never met him.

(Testimony of C. O. G. Miller.)

Q. Have you ever had any communication with him? [526] A. None that I know of.

Q. Do you know Mr. Herbert C. Freeman?

A. I think I have never met him unless I met him—one or two of those gentlemen have been out here about every six years and a half and I may have met him, but I am not sure.

Q. If it is a fact that Mr. Freeman has ever been in the State of California would you say that you had never met him? A. Yes.

Q. Have you ever communicated with him?

A. No.

Q. Do you know Mr. James F. Fogarty?

A. Yes.

Q. How frequently have you met him?

A. It would be hard to give the exact number of times. I have met Mr. Fogarty almost probably once every time I have been in New York. But in addition to that Mr. Fogarty happens to be a member of the Bohemian Club and he comes out to the Bohemian Grove activity every year, and I always see him up there quite often. But I have never discussed gas and electric matters with him at the Grove. It is an intellectual performance up there.

(Laughter).

The Examiner: That isn't what I heard about it.

(Laughter). [527]

By Mr. Phleger:

Q. The motto of the Grove is "Weaving spiders come not near?" A. That is right.

(Testimony of C. O. G. Miller.)

Q. To what extent, if any, have you discussed the affairs of the Pacific Gas and Electric Company with Mr. Fogarty elsewhere than at the Grove?

A. I did it once by telephone, had a conversation with him from San Francisco. I am not sure that I discussed it with him when I have been in New York. But I have usually gone to luncheon with George Leib, or some member of the firm of Leib & Co., and very often Mr. Fogarty has been there. That was for one, two or three years.

Q. Have your talks with him been casual conversation? A. Yes, sir.

Q. Have you discussed P. G. & E. affairs with him? A. I think not.

Q. You have no recollection of having discussed such affairs with him? A. No.

Q. Were you acquainted with Mr. Guy Earl during his lifetime? A. Yes.

Q. He was for a time prior to his death a director and member of the Executive Committee of the Applicant, was [528] he not? A. yes.

Q. And he attended meetings regularly?

A. Yes.

Q. Was he particularly active in the affairs of the company?

A. He took a great deal of interest in the Executive Committee meetings. I don't know of any activity outside of that.

Q. Was he more active than other, any other member of the Executive Committee?

(Testimony of C. O. G. Miller.)

A. I think not.

Q. Did he ever ask you to vote in any particular way, or to take any particular action as a director or a member of the Executive Committee?

A. No.

Q. Did he ever at any meeting that you attended express the attitude of the North American Company with respect to any pending matter?

A. I do not recollect it. I think not.

Q. If he had you would recall it?

A. I think not.

Q. If he had you would recall it?

A. I think I would remember it. I knew him very well. He was in the senior class of the Oakland High School when I [529] entered the junior class, and he was a junior at the University of California when I was a freshman. I knew him very well from the time I was a boy.

Q. But so far as you recall, and you would recall, you believe, he never mentioned the North American Company, or its attitude, at any meeting at which you attended?

A. I have no recollection of it.

Q. Do you own any stock in the North American Company? A. No.

Q. Does any member of your family, to your knowledge, own any stock in it? A. No.

Q. To your knowledge do any of these other companies that you are associated with own any stock in the North American Company?

(Testimony of C. O. G. Miller.)

A. No.

Q. Do you recall the purchase by Pacific Gas and Electric Company in 1930 of stocks of the Great Western Power Company of California and of the San Joaquin Light & Power Company from the North American Company? A. Yes.

Q. Was that purchase the subject of discussion for a considerable period before the transaction was consummated?

A. Yes; for many months.

Q. Were you familiar with the properties of the Great [530] Western Power Company?

A. Only in a general way. I never visited them.

Q. Was it an active competitor of the Pacific Gas and Electric Company? A. Yes.

Q. Had it been an active competitor for many years? A. Yes.

Q. Do you recall whether or not in years prior to 1930 there had been suggestions that the Pacific Gas and Electric Company should acquire the properties of the Great Western Company?

A. Yes; many times.

Q. State generally what those proposals and discussions were.

A. It would be hard for me to give the details because I never took part in any of the discussions with the Great Western. I recollect very well. I think as early as 1913, Mr. Drum asking me what I thought of the consolidation or absorption, and

(Testimony of C. O. G. Miller.)

every few years something would be suggested about it.

Q. It was a matter which was more or less constantly——

A. (interposing) It was chronic.

Q. Do you recall the acquisition by the Western Power Company, which was the holding company of the Great Western Power Company, of the control of the San Joaquin Light & Power [531] Company? A. I do very well.

Q. Do you recall about what date that was?

A. I am not quite sure, but in 1917 Pacific Lighting Corporation thought of buying the San Joaquin and I think it was shortly afterwards that the Western Power bought it.

Q. You mean 1917 or 1927?

A. 1917, the Lighting Company—I don't know when the Western Power bought it. I thought it was only a few years afterwards.

Mr. Bosley: Not as late as 1927 because they were operating at that time.

The Witness: Mr. Wishon would know.

Mr. Phleger: I think the record will show the acquisition was in 1925.

By Mr. Phleger:

Q. Now, after the Western Power Corporation had acquired control of the San Joaquin Light & Power, already having control of the Great Western Power Company, do you recall the North

(Testimony of C. O. G. Miller.)

American Company in turn acquiring control of the Western Power Company? A. Yes.

Q. Following that acquisition was the question of the Pacific Gas and Electric Company acquiring the majority stock of both the Great Western and San Joaquin Light and Power [532] Company more or less constantly a subject of discussion by the directors of the Pacific Gas and Electric Company?

A. In general terms; yes.

Q. Do you recall when the active negotiations commenced between representatives of the Pacific Gas and Electric Company and the North American Company regarding the later purchase?

A. I couldn't state it at all closely, but I think it was in the early part of 1929.

Q. Describe, if you can, the course of those negotiations.

A. I was an outsider then regarding the negotiations. The question was whether the Pacific Gas was willing to buy the property at the price asked. That was the question; whether they could afford to pay the bonus which they did pay to obtain it.

Q. The Pacific Gas and Electric Company was always desirous of acquiring those properties, was it not? A. Yes.

Q. And you have described it as whether or not it was willing to pay the price asked?

A. That is it. That is what it was in effect.

Q. Who conducted the negotiations on behalf of the Pacific Gas and Electric Company?

(Testimony of C. O. G. Miller.)

A. Mr. Hockenbeamer. [533]

Q. Do you know who represented the North American Company in most of those discussions?

A. I think Mr. Black did.

Q. Did Mr. Hockenbeamer consult you frequently in connection with the negotiations?

A. Yes. It is a hard question to answer when you say "frequently". Whenever he, which he did frequently, found something which was a little uncertain in his mind, he would ask the Executive Committee "What do you think of this?"

Q. Who were on the Executive Committee at that time with whom he consulted?

A. Frank Anderson. And in the early part, I think, John Drum was on it and resigned later, and Fred Elsey took his place. I think Fred Elsey was on the Committee at the time the purchase was made. I think that was all—and myself. After the purchase the number of the Executive Committee was increased to make a place for Mr. Earl.

Q. Was Mr. Chickering a member?

A. That is right. He came in with the Western States.

Q. So that at that time the Executive Committee consisted of——

A. (interposing) There were four.

Q. (continuing) —Mr. Hockenbeamer, Mr. Anderson, Mr. Elsey, yourself and Mr. Chickering?

A. That is right. I forgot Mr. Chickering. [534]

Q. That is, the President and four others?

(Testimony of C. O. G. Miller.)

A. That is right; four others.

Q. Were all of the members of the Executive Committee quite active in connection with the consideration of the transaction? A. Yes.

Q. And that continued for a period of months, did it? A. Yes.

Q. Before it was finally consummated?

A. That is right.

Q. Now, in the course of those discussions was anything reported by Mr. Hockenbeamer to the Executive Committee with respect to the position which the North American Company would occupy as a stockholder in Pacific Gas and Electric Company in the event the transaction were consummated? A. Yes.

Q. State the course of those discussions and what was said, in substance?

A. In substance, Mr. Hockenbeamer made a statement of this kind: "A great danger which might arise from this consolidation would be that the North American Company would overwhelmingly be the largest stockholder."

I cannot recall the number of shares they had, but something like 2,000,000 or more. It was discussed by the [535] members of the Committee for half a dozen times or more. I don't just know how long it was discussed, but Mr. Hockenbeamer stated the North American Company was willing to stipulate that it would never use its stock to attempt to gain control, or something to that effect.

(Testimony of C. O. G. Miller.)

Q. That was an assurance, was it, which was given by Mr. Hockenbeamer in behalf of the North American Company to the members of the Executive Committee when this transaction was being discussed, was it not?

A. That is my recollection. I think it was repeated probably half a dozen times during the negotiations.

Q. Was the question of the position of the North American Company, in the event the transaction was consummated, one which received repeated and active consideration by the Executive Committee?

A. Yes.

Q. Would you have voted to consummate the transaction unless there had been, that is, if there had not been some assurance with respect to the position of the North American Company after the transaction?

A. I am not sure, but I think not. It would have depended a great deal on what the attitude of North American was stated to be. If I had thought they were going to sell the stock it would have made no difference. It is not a [535-A] desirable thing to have any stockholder with 10 percent, 12 percent or 15 percent of the stock.

Q. That was in your mind? A. Strongly.

Q. And in the minds of the other members of the Executive Committee?

A. I am sure it was.

Q. Was it in Mr. Hockenbeamer's mind?

(Testimony of C. O. G. Miller.)

A. Yes; it was constant with him.

Q. And it was only after Mr. Hockenbeamer had given the assurance, or had made the statement that the North American Company would not attempt, as a stockholder in Pacific Gas and Electric Company, to control or dominate it that the transaction was authorized? A. That is correct.

Q. Do you recall where you were when the news came that the negotiations which were then in progress had been consummated?

A. I received a cable when I was in Calcutta, India, stating that the agreement had been signed and asking for the approval of Mr. Frank Anderson and myself.

Mr. Phleger: I offer in evidence, as Applicant's Exhibit No. 43, a telegram addressed to C. O. G. Miller, Singapore, signed by Hockenbeamer, dated March 7, 1930, and attached to it a copy of a cablegram addressed to Hockenbeamer, San Fran- [536] cisco, signed by Miller, dated March 16, 1930.

The Examiner: Have you seen these, Miss Calkin?

Miss Calkin: No objection.

The Examiner: Without objection these documents just described will be received in evidence and marked Applicant's Exhibit 43-A and 43-B, respectively.

(The documents referred to above were marked Applicant's Exhibits 43-A and 43-B, respectively, and were received in evidence.)

(Testimony of C. O. G. Miller.)

By Mr. Phleger:

Q. Mr. Miller, directing your attention to the copy of the cable addressed to you, do you recall having received the original of that cable?

A. Yes.

Q. It reads as follows:

"March 7, 1930

"C. O. G. Miller

"Amexco, Singapore

"Agreed one million eight hundred twentyfive thousand vendor cancelling nineteen million two hundred thousand advances including three million three hundred thousand since close August stop. Three directors one member executive committee no proxy but positive assurances non interference stop. Economies now conservatively estimated one and one half million after which earnings vendors properties estimated three dollars per share [537] issued. Agreement subject approval directors and commission. Latter apparently favorably inclined. Board meeting Wednesday. O'Brien personally assured me of his support stop. Expect quick action. Hope satisfactory and appreciate expression yourself and Anderson. Regards.

Hockenbeamer."

Do you recall receiving that cablegram?

A. I do.

Q. Do you know—what did you take to be the meaning of the expression "three directors one

(Testimony of C. O. G. Miller.)

member executive committee no proxy but positive assurances non interference" to mean?

A. To mean that the North American expected three representatives on the Board and one on the Executive Committee, and they would not give a proxy, but positive assurance they would not attempt to interfere with the management.

Q. Did that constitute an assurance to you upon matters which had previous thereto been the subject of discussion between yourself and Mr. Hockenbeamer? A. Yes.

Q. And was it also an assurance to Mr. Anderson on matters that Mr. Anderson had previously discussed? A. Yes.

Q. You replied to that telegram, did you not, by a [538] telegram reading as follows—I am reading from the remainder of the exhibit:

"Hockenbeamer Gas Co.

"San Francisco, California.

"Message received sixteenth. We approve. I congratulate you.

"Miller."

You sent that telegram, did you? A. Yes.

Q. The "we" there mentioned includes Mr. Anderson and yourself? A. Yes.

Q. And the telegram was sent with the approval of Mr. Anderson, was it not?

A. Yes, I asked him the distinct question: "Am I authorized to state that you approve?" and he said "yes".

(Testimony of C. O. G. Miller.)

Q. Following the consummation of the transaction three directors were elected to the Pacific Gas and Electric Company Board representing the North American Company, were they not?

A. Yes.

Q. Do you know who those men were?

A. I know Mr. Earl and, I believe, Mr. Freeman, and one of the others, but I am not sure.

Q. Mr. Black? [539]

A. I think he was; that is right.

Q. Mr. Black, Mr. Gruhl and Mr. Earl?

A. That is right.

Q. And was the Executive Committee then increased by another member?

A. Yes; Mr. Earl went on that committee.

Q. Now, from the time that this transaction was consummated up until the time Mr. Black became president of the company did you ever hear in the meetings of the Board of Directors, or of the Executive Committee, or otherwise, any statement purporting to represent the attitude of the North American Company with respect to any pending matter or past transaction?

A. I have no recollection of it. I think I would recollect it if there had been anything of importance.

Q. When did you first become acquainted with Mr. Black?

A. It would be difficult for me to say. I am not

(Testimony of C. O. G. Miller.)

sure. He was active in the Western Power or the Great Western, the operating company here, for many years. I occasionally met him. He was a member of the Pacific Union Club. I occasionally saw him there. However, I have known his wife's family from the time I was a small boy. I have visited at his father's and mother-in-law's house before Mrs. Black was born. I felt that I knew him a little better than if he had been a complete stranger. [540]

Q. You knew of his work, did you not?

A. Yes.

Q. When he was an officer of the Great Western Company in competition with the P. G. & E.?

A. I did.

Q. And did his work make an impression upon you and the other officers of the P. G. & E.?

A. I think so.

Q. Great Western was a very active competitor, was it not?

A. Yes. It doesn't usually bring about cordial relations, but it does sometimes.

Q. Mr. Miller, you have known Mr. Foote for many years, have you not?

A. Yes; 35 years or so.

Q. How long have you known Mr. John D. McKee, who is a director of the company?

A. Well, about 50 or 60 years. He is an old man. He is two days older than I am. On his birthday,

(Testimony of C. O. G. Miller.)

when I see him, I say "Poor old fellow. You are older than I am."

Q. How long have you known Mr. Livermore?

A. Longer. Mr. Livermore's parents went to the same church that my parents did in Oakland sixty years ago and I used to see him when he was a little boy. [541]

Q. How long have you known Mr. Chickering?

A. The same length of time as Mr. Livermore.

Q. How long have you known Mr. Downing?

A. Twenty odd years; 30 odd years.

Q. How long have you known Mr. Coghlan?

A. About the same length of time that I have known Mr. Downing.

Q. How long have you known Mr. McIntosh?

A. About 50 years.

Q. How long have you known Mr. Wishon?

A. Twenty-five years or more; perhaps 30.

Q. How long have you known Mr. Silas H. Palmer?

A. He is not a generation younger than I am, but he occupies about the same place with Mr. Livermore. I used to see him as a little boy in Oakland.

Q. How long have you known William W. Crocker? A. Forty years.

Q. Did you know his father, William H. Crocker? A. Yes; very well.

Q. He was a director for many years in the company? A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did Mr. William H. Crocker take an active interest in its affairs? A. Yes. [542]

Q. How long had you known Mr. Henry D. Nichols?

A. Fifty years. He was educated in Oakland where I lived, up to 1904.

Q. You had known Mr. Hockenbeamer many years previous to his death, had you not?

A. Yes.

Q. And you had known Mr. Creed intimately before he became president? A. Very well.

Q. And you, of course, had known Mr. Fred Drum?

A. I had known him since he was a boy, but he was older, so I will say, since I was a boy.

Mr. Phleger: Mr. Examiner, it is now after 4:30, and I suggest that this is an appropriate time to adjourn.

The Examiner: If you have reached a convenient place we will recess now.

The hearing will be resumed on Monday morning at 10:00 o'clock in the hearing room of the Railroad Commission in the State Building at the Civic Center, San Francisco.

(Whereupon, at 4:30 p. m. an adjournment was taken to Monday, November 18, 1940, at 10:00 a. m. in the hearing room of the Railroad Commission, State Building, San Francisco, California.) [543]

(Testimony of C. O. G. Miller.)

Hearing Room, California State Railroad Commission, California State Building, San Francisco, California, Monday, November 18, 1940.

Met, pursuant to adjournment, at 10:00 o'clock a. m. [544]

PROCEEDINGS

The Examiner: Mr. Miller, I think you were on the stand. Will you please resume the stand?

Whereupon—

C. O. G. MILLER

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. Miller, you have testified that you knew Mr. Black for at least 20 years, and that you met him first when he was connected with the Great Western Power Company before he went east?

A. Yes.

Q. After the transaction in 1930 when the Pacific Gas and Electric Company purchased the stocks from the North American Company did you see Mr. Black frequently or not?

A. I would not say frequently. I am not quite sure whether it was once or twice a year, but I think it was about twice a year that he used to come to California and I would always see him then.

(Testimony of C. O. G. Miller.)

Q. Would he call on you? A. Yes.

Q. And on those occasions did you discuss the Pacific Gas and Electric Company business? [545]

A. Yes.

Q. In any detail?

A. In no great detail, but in general terms.

Q. Now, that situation continued, did it not, up until 1935 when Mr. Hockenbeamer died?

A. Yes.

Q. Had you known Mr. Hockenbeamer long?

A. About 25 years, I think. I think it was just after the earthquake; since then.

Q. That was during the period he was with the P. G. & E.? A. Yes.

Q. You recall Mr. Hockenbeamer died sometime in November of 1935? A. Yes.

Q. Had Mr. Hockenbeamer been ill for any extended period?

A. I think not. My recollection is he was away from the office not to exceed ten days, and it may have been less than that. It was a great surprise to me when I heard of his death.

Q. You would say that was true also with respect to the rest of the directors, they had not anticipated his death

A. I think that is the case.

Q. Now, will you explain what took place following the news of Mr. Hockenbeamer's death with respect to the selection of a successor as president of the company?

(Testimony of C. O. G. Miller.)

A. I can only testify from my own part in it. At that [546] time Mr. Fred Elsey was alive and was a member of the Executive Committee. Mr. Anderson had recently died. I forgot who succeeded him now. I think it was Mr. Livermore. I am not sure. Was Mr. Livermore——

Q. (interposing) On the Executive Committee—yes. A. Yes.

Q. He wasn't on at that time?

A. I wasn't sure whether it had been filled. I am not sure whether it had been filled or not. But Mr. Elsey had been a member of the Executive Committee for many years and he and I discussed the vacancy. It was suggested that Mr. Black would make a very good president. We agreed on it and asked the other members of the Committee what they thought about it. My recollection is that—I am not sure whether we took up the matter with Mr. Black before the other directors were consulted or not. I can't remember that.

Q. Do you recall who first mentioned Mr. Black's name?

A. I don't know. At the meeting the first time that the matter was discussed with me was with Mr. Elsey alone.

Q. But did you bring up Mr. Black's name or did Mr. Elsey? A. I think I did.

Q. Did Mr. Elsey agree that he would be the best person to select? A. Yes.

Q. And what happened then? [547]

(Testimony of C. O. G. Miller.)

A. My recollection is that we thought we should immediately consult the other members of the Executive Committee first. I am not sure whether that was anyone else besides Mr. Chickering. I can't remember. If Mr. Livermore had not been appointed on the Committee he couldn't have been there. Anyway, Mr. Chickering acquiesced, or was quite enthusiastic, and I think then we consulted the other directors privately, Mr. McKee, Mr. Crocker and, I think, Mr. Livermore.

We then had to find out whether Mr. Black was available. I telephoned to Mr. Fogarty. I had several telephone conversations with Mr. Fogarty. There were some suggestions made. I think Mr. Chickering said that it was very important that Mr. Black should sever his connection entirely with the North American Company. He was asked if he were willing to do this and he said he was.

Q. Did all of the directors that you spoke to agree in the selection of Mr. Black? A. Yes.

Q. It was unanimous? A. Yes.

Q. Do you recall having spoken to Mr. William H. Crocker?

A. I am not sure whether I did it, or whether Elsey, or whether Chickering did. I am not sure. My recollection is that he was ill at the time and sent word that—I think he said it was all right. I am sure it was something to the [548] effect that whatever we agreed on would be satisfactory.

Q. Did you have any communication with any-

(Testimony of C. O. G. Miller.)

one in the North American Company previous to the decision on your part, and that of Mr. Elsey, that Mr. Black should be selected? A. No.

Q. You were entirely a self-starter, were you not? A. Absolutely.

Q. And the North American had nothing whatever to do by way of suggestion or otherwise with his selection, is that correct?

A. Absolutely nothing; no. Mr. Fogarty expressed surprise when I asked him.

Q. What were the reasons for your decision to select Mr. Black?

A. There were many. One reason was Mr. Black was a young man and we thought it was important that the Chief Executive position be held by a man who was young, who had many years before him.

We were familiar with Mr. Black's work and knew a great deal about him. We had seen enough of him to make us feel that he would be satisfactory.

I will make a slight digression here if it is all right. One of the directors, when Mr. Black's name was suggested said something like this: "Jim Black is a splendid man, but shouldn't we canvass all the available men in the country?"

There was one director who said, "I think it would be [549] a great mistake to take a man you do not know a great deal about personally."

A man might make a great success as head of a company in Philadelphia, Boston or Chicago, and

(Testimony of C. O. G. Miller.)

not fit in here. It takes you a few years to know the peculiarities of men.

I said I would rather take Mr. Black, knowing him as we do, than anybody that we did not know.

That was another reason why he was selected.

Q. Was the fact that Mr. Black was a California man, and had been intimately connected with the management of properties which constituted the Pacific Gas and Electric system, one of the factors in your selection? A. It was.

Q. Did you consider the fact that Mr. Black was connected with the North American Company advantageous or not when it came to consider him for this position?

A. I think someone mentioned that should not be considered against him. But it was also mentioned that it seemed impossible that he would not be satisfactory to the North American.

Q. Was that connection considered by you a desirable factor, or a negative or passive factor?

A. Passive, but not negative. I think it is good to have your stockholders satisfied with the executive management.

Q. But the fact that the stockholder would be satisfied [550] was not considered by you, was it, as an affirmative reason for his selection?

A. No.

Q. Did you talk this matter over with Mr. Black over the telephone? A. Yes.

Q. And in that conversation, whether it was one

(Testimony of C. O. G. Miller.)

or more instances, did you ask him whether or not, if he accepted this position, he would sever all relationship of every kind with the North American Company? A. Yes.

Q. And what was his answer?

A. He said he would.

Q. Did you have this conversation with him before he came out to San Francisco?

A. Yes. My recollection is I had the conversation before he was elected president.

Q. In other words, you obtained from him his assurance that he would be available if called and that he would sever all of his relationships with North American if he was called, is that correct?

A. Yes.

Q. Do you recall the directors' meeting at which he was elected?

A. I cannot recall any of the details except he was elected. [551]

Q. Was the action unanimous? A. Yes.

Q. Was the matter of his selection taken up with the group of, what I might term, officer directors, after all of the non-officer directors had first decided upon it?

A. Yes. It was taken up with Mr. Downing.

Q. And all of the members of the Board were acquainted with the decision of the Executive Committee and non-officer directors before the meeting was held? A. Yes.

Q. While the matter of Mr. Black's selection

(Testimony of C. O. G. Miller.)

was under consideration did any stockholders of the company speak to you with respect to the vacancy?

A. Yes.

Q. Did any of the stockholders, without prior mention of Mr. Black's name, or suggestion by you, themselves bring up Mr. Black's name?

A. Yes. The most conspicuous was Horace D. Pillsbury. He has died since then. He was Chairman of the Board of the Pacific Telephone & Telegraph Company. He was a close friend of mine. He was riding with me one day in a car and he said, "Of course, it isn't any of my business but have you considered Jim Black for the vacancy in the Pacific Gas?"

I said, "Shssh! Shssh! He is going to be elected."

Q. Was Mr. Pillsbury a large stockholder in the Pacific [552] Gas and Electric Company?

A. I don't remember now how many shares he had. I think he had at one time something like 10,000 or 15,000 shares. I believe they now have a number of thousand shares in some of the trusts he made.

Q. He and his father were interested in the Snow Mountain Power Company which became part of the Pacific Gas and Electric Company system?

A. Yes. That is how they acquired their stock.

Q. There were other stockholders besides Mr.—

A. (interposing) Yes. I cannot recall the names now, but I think I must have been stopped at least by five or six stockholders who said to me casually,

(Testimony of C. O. G. Miller.)

"If you are looking for a president why don't you consider Jim Black."

I told them afterwards they were all wise men.

Q. Mr. Miller, does Mr. Black control the Pacific Gas and Electric Company?

A. I believe not.

Q. Does the Executive Committee fully and freely discuss all matters that come before it for decision? A. Yes.

Q. And is that true also of the Board of Directors? A. Yes.

Q. Mr. Miller, have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas [553] and Electric Company is controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company?

A. No.

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt? A. I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, other than Mr. Fogarty and Mr. Freeman, would also oppose such an attempt? A. I believe they would.

Q. In the event that the North American Com-

(Testimony of C. O. G. Miller.)

pany were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I think not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be [554] successful in its attempt?

A. I do not.

Q. Will you give the reasons for your answer to the last question?

A. I assume, of course, that the management of the Pacific Gas and Electric Company would remain proper and would attempt to fulfill its duties. The Board of Directors of the Pacific Gas has representatives of a number of groups of influential people in San Francisco. I think if those groups agreed on any course as being the proper one for the corporation to follow, and the management of the corporation was in accord with that, I think they could stand up against anything.

Mr. Phleger: I think that is all, Mr. Miller.

The Examiner: Miss Calkin, cross examination?

Cross Examination

By Miss Calkin:

Q. Mr. Miller, what is the business of the Pacific Lighting Corporation?

(Testimony of C. O. G. Miller.)

A. It is a holding company. I think it is the second oldest holding company in this country.

Q. It is a holding company for utility stocks?

A. Yes.

Q. What are its principal subsidiaries?

A. The Southern California Gas Company, the Southern Counties Gas Company, the Santa Maria Gas Company. At one time I think they owned many other companies, but they have [555] been consolidated mostly now.

Q. Applicant's Exhibit No. 32 lists the American Trust Company as holding about 24,000 shares of the preferred stock of the Applicant and 25,000 shares of the common. Am I correct in assuming that that is owned by the American Trust Company for the benefit of others, numerous other stockholders, numerous other persons? A. Yes.

Q. Mr. Miller, do you own any of the securities of any of the subsidiaries of the North American Company? A. No.

Q. Referring to Applicant's Exhibit 43 (a), I believe, which is the telegram you received from Mr. Hockenbeamer, wherein it is stated that, in substance, the North American Company would not give a proxy, what was your understanding of that language in that telegram?

A. The meaning of the telegram?

Q. Yes—that portion of it.

A. That the North American Company would not give an irrevocable proxy, but had promised in

(Testimony of C. O. G. Miller.)

good faith not to attempt to obtain control or seek proxies.

Q. It means it would not give any irrevocable proxy for the slate of the directors that the management might choose?

A. I would put it broader than that: That they were unwilling to give an irrevocable proxy to anyone for a long [556] period of years. It was not unexpected by me, at least.

Q. Mr. Miller, were you ever associated with the Western Power Corporation, or any of its subsidiaries, prior to 1930?

A. No. I was in the original syndicate which bought the bonds—I forget the name of it—of the steam plant they had in Oakland. I think that was in about 1910, but I am not quite sure. I was out of it within six months.

Q. Those were the bonds of one of the subsidiaries of Western Power Corporation?

A. Yes. For the moment I have forgotten its name. I think it was the Electric Generating Company—something like that.

Mr. Gerdes: California Electric Generating Company.

The Witness: I got into that entirely outside the Western Power. J. Barth & Co., Brokers, put me into that.

By Miss Calkin:

Q. As a director of the Applicant, what contacts

(Testimony of C. O. G. Miller.)

do you have with the Vallejo Electric Light & Power Company, if any? A. None.

Q. Are Vallejo's operating problems discussed at the meetings of the Applicant's Board?

A. Casually.

Q. To what extent?

A. Mention has been made at some of the meetings of the [557] conditions surrounding the Vallejo Company.

Q. Do you know who determines the policies of the Vallejo Electric Light & Power Company?

A. I believe the president and his group.

Q. Do you know who the president of the Vallejo Electric Light & Power Company is?

A. I do not for the moment recall his name, but I would know it if I heard it.

Q. Do you know whether or not the Applicant has made any attempts to acquire all of the outstanding capital stock of the Vallejo Electric Light & Power Company?

A. I am not sure about that.

Q. Mr. Miller, who would you say were the most dominant persons in the Applicant's history prior to 1930?

A. Of the Pacific Gas and Electric Company?

Q. Yes.

A. When the company was formed E. J. de Sabla and John Martin, Richard Hotaling, Frank Drum, Louis Sloss and John A. Britton.

(Testimony of C. O. G. Miller.)

Q. Could you describe Mr. Hockenbeamer's outstanding characteristics?

A. It is a little hard to do it briefly. I would say this about Mr. Hockenbeamer: That he had what I called a flare for money and in determining operations he was always anxious that there should be no mistake made as regards the [558] financial outcome.

I have heard him express a number of times, when a proposition came up as to whether the Pacific Gas should buy some other property, I have heard him use this expression: "It will pay its board and lodging." He was a very careful man.

He was comptroller some years ago before he was the president.

Q. Would you say he was more skilled in the financial policies of utility operations than in the operating angle of the business?

A. I am not sure. In general terms, I don't think he paid very much attention to the detail of operations. I am not sure he was skilled in the financial end. He had been connected with N. W. Halsey & Co., a bond house, for a great many years. I think before that he was with the Baltimore & Ohio Railroad Company, but I am not sure.

Q. Who would you say was the most active in the negotiations which culminated in the acquisition by the Applicant of the securities of the subsidiaries of Western Power Company?

A. I would say that Mr. Hockenbeamer was 99

(Testimony of C. O. G. Miller.)

percent in behalf of Pacific Gas and Electric Company.

Q. Do you know who carried on those negotiations in behalf of the North American Company?

A. I believe Mr. Black did mostly.

Q. Which company would you say was most anxious to consummate that transaction, the Applicant or the North American [559] Company?

A. That is a very difficult question to answer. Perhaps it would be correct to say both.

Q. Do you know which company approached the other in 1929 in regard to the acquisition of those securities? A. I am not sure.

Q. Did Mr. Hockenbeamer keep the Board informed as to the various terms and negotiations, and obtain its advice, or were the negotiations largely carried on by Mr. Hockenbeamer without much attention to the Board?

A. Mr. Hockenbeamer kept the Executive Committee posted.

Q. You were a member of the Applicant's Board when Standard Gas & Electric Company acquired a large block of its common stock, were you not?

A. Yes.

Q. Do you recall that Standard Gas & Electric Company was required to give a written assurance as to its participation in Applicant's affairs and the disposal of its stock?

A. I have some recollection of it, but it is not very distinct.

(Testimony of C. O. G. Miller.)

Q. Do you know what assurances were given by Standard in regard to the extent of its participation in Applicant's affairs? A. I am not sure.

Q. Do you know what assurances were given as to the [560] disposal of its stock?

A. No, I am not sure about that. My recollection is there was something said—if they ever wished to dispose of their stock they would notify the company so it could be done in an orderly manner and not have a bad effect on the market.

Q. Do you know whether or not the North American Company was requested to give a written assurance as to the extent of its participation in Applicant's affairs?

A. No, I am not sure; but I know the matter was discussed.

Q. Were you ever told that North American refused to give the same assurances which the Applicant had received from Standard Gas & Electric Company?

A. My impression is that I was aware of that before I left here. I left San Francisco in January 1930. The cable indicated it, or stated it. "Stated" is better than "indicated".

Q. I think the cable stated that they had given some assurance as to non-interference?

A. Yes. "* * * no proxy but positive assurances non-interference."

Q. Do you know whether or not that assurance was reduced to writing?

(Testimony of C. O. G. Miller.)

A. I do not, but I am of the impression it was not.

Q. And you did not know whether or not North American [561] was requested to reduce those assurances to writing and, if they were so requested, why they refused to do so?

A. The reason why they declined it is impossible for me to divulge because I do not know. I can understand the reluctance of any company having an investment of $50,000,000 in an enterprise, stating that they would for an indefinite period waive their rights of expressing an opinion.

Q. You and other members of the Board were apprehensive concerning the possible attempt by North American to dominate the affairs of the Applicant after its acquisition of these securities, were you not, Mr. Miller? A. I think I was not.

Q. And in view of the fact that North American Company was at that time one of the largest holding companies in the country, why were you not apprehensive?

A. I was of the opinion that with about one-sixth of the stock—that the groups in California, if they were in accord on any policy, would be able to carry easily against one-sixth or one-fifth of the stock.

Q. But the Board did discuss the future influence that North American might have over Applicant's policy?

(Testimony of C. O. G. Miller.)

A. Absolutely. You know when you are married it is a long contract.

Q. Did Mr. Black ever make any representations to the Board at any meetings attended by you regarding the extent of North American's participation? [562] A. None that I am aware of.

Q. Did you ever discuss the matter personally with Mr. Black? A. No.

Q. Was the matter discussed by you with any other representatives of the North American Company? A. No.

Q. Did you have any conversations during this period with Mr. Fogarty, that is, before the deal was consummated?

A. No. I think I did not know him them.

Q. Was the telegram, which has been introduced in evidence as Applicant's Exhibit No. 43(a), your first knowledge that North American would have three representatives on Applicant's Board and one representative on its Executive Committee?

A. I think not. I cannot recall all of the details, but that seemed to be a normal representation. In fact, it was less on the Executive Committee. If there were five on the Executive Committee it was a small representation.

Q. Do you know whether or not other members of the Board were familiar with the arrangement, that is, that North American should have three representatives on the Board and one on the Ex-

(Testimony of C. O. G. Miller.)

ecutive Committee, prior to the time the deal was consummated?

A. There must have been notice of it. [563]

Q. Do you know why North American now has only two representatives on the Board, rather than three, and none on the Executive Committee?

A. My recollection is that we needed a vacancy on the Board and, I think, it was suggested to the North American Company that they did not need an absentee director, but I am not quite sure of it.

Q. Do you recall any discussions relating to a request of the North American to not have three representatives on the Board in order that Mr. Palmer might be elected?

A. Was that a request from the North American?

Q. No. A request to North American that they waive their right to one director.

A. I think that is the case, but I am not sure.

Q. Has anyone representing the North American Company ever told you that its representation on the Board was not as important with Mr. Black as president as it was during Mr. Hockenbeamer's lifetime? A. No.

Q. Do you consider Mr. Black as a North American representative on your Board? A. No.

Q. Have you ever so considered him since his election as president? A. No.

Q. How is the Proxy Committee, or the proxies for the [564] annual stockholders' meeting selected?

(Testimony of C. O. G. Miller.)

A. Either the Board of Directors or the Executive Committee passes a resolution directing the Secretary to send out for proxies.

Q. And that resolution names the proxies?

A. Yes. That resolution names the parties to whom the proxies are to run.

Q. What part does the president play in the suggestion of those names? A. I don't know.

Q. Do you know who makes up the slate of directors to be voted for by the proxies?

A. I would say the Board of Directors does. I am not aware at any meeting of every director not being re-elected.

Q. Does Mr. Black advise you as to who North American's nominees of the directors for the ensuing year will be? A. I am not aware of it.

Q. As to the directors who are employees of the Applicant, which directors, in your opinion, are most active in the affairs of the company?

A. I would think the four members of the Executive Committee, Mr. Chickering, Mr. Livermore, Mr. Palmer and myself.

Q. How would you compare the functions of the Board with those of the Executive Committee?

[565]

A. I would say the Executive Committee acts between sessions of the Board. The Executive Committee meets once a week. The directors meet usually once a month.

Q. Does the Executive Committee, generally

(Testimony of C. O. G. Miller.)

speaking, consider more detailed matters than are presented to the Board?

A. Enormously more.

Q. Does Mr. Black ever advise the Board as to North American's recommendations with respect to a particular matter which he submits to it for its consideration?

A. I have never known him to do so.

Q. Since you have been a director have you ever been advised from any source what North American's wishes were with respect to a particular matter relating to the Applicant's business?

A. I am unaware of any except the dividend.

Q. Does the Board ever inquire of Mr. Black whether he has conferred with North American representatives on major problems, and, if so, what its suggestions have been?

A. I have never heard anyone ask that question.

Q. What weight would you give to a suggestion of North American, in view of the fact that that company is the largest stockholder of the Applicant?

A. I would consider it very carefully, with great consideration. I would give great consideration to the suggestion, which I thought was made in good faith, that came from [566] any large stockholder.

Q. How frequently have you discussed matters pertaining to the Applicant with Mr. Fogarty?

A. It would be a little difficult to say; perhaps four or five times.

(Testimony of C. O. G. Miller.)

Q. During what period of time?

A. The last five years.

Q. Prior to that time did you have any discussions with Mr. Gruhl, Mr. Dame or Mr. Doolittle?

A. No. I have no recollection of meeting any of those gentlemen.

Q. Did you know Mr. Freeman?

A. No, not unless I met him—if he has been here for directors' meetings I probably met him, but I don't recollect that.

Q. Have you ever talked to Mr. Fogarty over the telephone regarding Applicant's affairs, other than the conversations you had with respect to Mr. Black's presidency? A. No.

Q. Have you ever had any correspondence with any representatives of the North American Company? A. No.

Q. Did Mr. Hockenbeamer ever advise the Board of suggestions made by North American during his presidency? A. I do not recollect it. [567]

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president of the Applicant?

A. Not that I am aware of.

Q. Has the Board ever disapproved a matter recommended by Mr. Black?

A. Not that I am aware of.

Q. Was the relationship between the Board and Mr. Hockenbeamer always harmonious?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did you consider Mr. Earl to some degree, at least, as spokesman for the North American while he was a member of your Board and Executive Committee? A. Yes.

Q. Did he frequently advise the Board as to North American's views on particular matters?

A. I never heard him do it once.

Q. You do not know the extent to which Mr. Earl conferred with North American representatives? A. I do not.

Q. In view of the fact that Mr. Earl was a representative of the North American Company on your Board, and attended Board meetings and Executive Committee meetings with a fair degree of regularity, it is true, is it not, that since Mr. Earl's death North American has not had a representative on [568] the Board that has been as active as Mr. Earl was?

A. Yes, that is quite true. I think in Mr. Earl's case—I am not sure of this at all—Mr. Earl was the president of one of our local companies, and I am of the opinion that he received a salary from the North American Company as long as he was on the P. G. & E. Board. I always thought—call it a pension or anything you like, he had lost his job and I am of the opinion he was paid by them.

Q. You mean in his capacity as an officer of Western Power Corporation——

A. (interposing) To be their representative. That was my opinion.

(Testimony of C. O. G. Miller.)

Q. Mr. Earl died only a few months prior to Mr. Hockenbeamer's death, did he not?

A. Yes.

Q. Do you know whether or not any of the other director's of the Applicant talked to Mr. Black prior to the time he was elected president?

A. I do not know; I think not.

Q. Well, did the Excutive Committee, or the directors, in effect appoint you as their representative to carry on the conversations with Mr. Black? Was that the understanding that you were to do that? A. Yes.

Q. Now, what was the substance of your conversation—— [569] scratch that.

Am I correct in assuming that before talking to Mr. Black you talked to Mr. Fogarty on the phone about this matter? A. Yes.

Q. What was the substance of your conversation with Mr. Fogarty?

A. It is a little hard to give it, but I will give you my recollection of it. It was something like this: That we, knowing the Executive Committee and the directors were considering the selection of Mr. Black to be president, asked him if there was any reason he knew of why Mr. Black could not serve.

Q. What was Mr. Fogarty's reply?

A. He said "No". He thought Mr. Black would do well, or would be a proper party, or something of that kind.

(Testimony of C. O. G. Miller.)

Q. How many telephone conversations did you have with Mr. Fogarty respecting this matter?

A. I am not sure. I think it was three; it may have been four.

Q. Did you talk to Mr. Fogarty again, after your first conversation, before you talked to Mr. Black? A. I think so.

Q. What did you tell him on that occasion?

A. My recollection is that I told him that the Executive Committee and directors had decided to ask Mr. Black. I [570] think I asked him to speak to Mr. Black about it, to see if he could get in touch with him.

Q. What did Mr. Fogarty tell you on that occasion?

A. He acquiesced, or said he was glad of Mr. Black's selection, or something of that kind.

Q. What was the substance of your first conversation over the telephone with Mr. Black?

A. I will have to trust my memory entirely. I think I told him that the Board of Directors would like to have him as president of the company, and asked him if he would accept and, if he did, we would like to have him sever his connection with the North American Company.

Q. And prior to that telephone conversation Mr. Fogarty had acquainted Mr. Black with the conversations that you had had with Mr. Fogarty?

A. I would assume he did. I think he did.

(Testimony of C. O. G. Miller.)

Q. Did you have more than one conversation with Mr. Black before he came out here?

A. I am not sure.

Q. He was elected prior to the time he arrived in San Francisco, was he not? A. Yes.

Q. Was it possible that Mr. Black, because of his association with North American, might be influenced and dominated by North American considered by the Board before it [571] selected him as president.

A. I think not. I think the Board felt, knowing Mr. Black, that if he took the presidency of the Pacific Gas and Electric Company he would be the president of that company and would not be influenced by anybody else.

Q. Before Mr. Black was offered the position did you receive any assurances from him as to what his future attitude toward North American suggestions would be?

A. No. He was not asked for any. I think it was not considered at all.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if Mr. Black conferred freely with North American before submitting matters to your Board?

A. Well, that is a hypothetical question. I don't know. I can't allow the premises.

Q. Why, Mr. Miller, would you oppose any attempt on the part of North American to control or

(Testimony of C. O. G. Miller.)

exercise a controlling influence over the Applicant?

A. I consider it would be injurious to the corporation. If they were to control the corporation, among other things, we would be under the Securities Bill, that lovely Bill, which is a very fine Bill for those who like it. I think, as a corporation, and as its predecessors have been California people, I think since 1854, I think there is a considerable [572] sentiment among those who have succeeded the men who were in control of the company fifty and sixty years ago that that control should stay in California. I think it is better for the company.

Q. You feel it would be detrimental to the public relations of the Applicant if it were controlled by——

A. (interposing) Yes. And outside of that I think it would be detrimental to the corporation. I'll gladly accept that suggestion. It would be bad for public relations. You would have every yapping politician claiming it was a foreign corporation and it is not.

Q. You do not know of your own personal knowledge the extent of Mr. Black's contacts with the North American people?

A. I am not sure I understand the question, but I think the answer is "No".

The Examiner: Do you want to have the question read?

The Witness: No. I am not quite sure what it

(Testimony of C. O. G. Miller.)

means. I understand the words. It is a little indefinite—"contacts".

By Miss Calkin:

Q. It would be possible, would it not, for Mr. Black to obtain advice from the North American Company on problems of the Applicant without the knowledge of the directors?

A. Certainly; yes.

Q. What major changes, if any, have occurred in the Applicant's operating and financial policies since Mr. Black [573] became president of the company?

A. I am not aware of any. I think they are approximately the same as they have been.

Q. As a director of the Applicant are you familiar with the reports sent by the Applicant to North American?

A. No; that is, if they are different from what are sent anybody else.

Q. Mr. Black has never advised the Board as to the extent of information concerning Applicant's operations which is furnished the North American?

A. My recollection is that he has mentioned it two or three times, but I am not quite sure just what it was he sent. Anyone who is familiar with the SEC has probably seen the vast number of papers which accumulate information on all subjects. I know every utility is in the habit of sending a great deal of information to bond houses, invest-

(Testimony of C. O. G. Miller.)

ment counsellors, who request it. I am of the impression that anything that Mr. Black sends the North American is not more than would be sent practically to any large stockholder who requested detailed information.

Q. Do you know whether or not a copy of the Applicant's proposed budget is submitted to North American before it is submitted to the Board for its approval?

A. I am sure that it is not.

Q. What is the extent of Mr. Black's authority to [574] expend money for items included in the budget without first submitting the matter to the Executive Committee?

A. I don't know. I would say, however, that Mr. Black has, in the past five years, so conducted his affairs that if he were to report to the Executive Committee, "I spent this large sum of money for the good of the company, but I didn't have an opportunity to obtain its approval beforehand," it would be approved.

Q. Is it correct to say that the Board takes action on all major problems of the Applicant relating to finance and construction, and other matters, without being advised as to North American's viewpoint on the problem?

A. I think I would say that it is never advised as to the viewpoint of the North American. I am of the opinion that any information given to North American is not information which has not been

(Testimony of C. O. G. Miller.)

decided. Any information given to North American, as I understand it, is what has been accomplished, or what has been decided.

Q. Do you know whether or not any phase of the Hetch Hetchy situation has ever been discussed with the North American people?

A. I do not know.

Q. A moment ago you referred to the fact that you did become acquainted with the North American's objection to some action taken by the Board in reference to dividends. Who [575] acquainted you with that objection, and what was the substance of it?

A. I acquainted myself. I was in New York and I received the news, and I immediately called on the North American Company and said "Those boys are not running that thing properly in San Francisco. We will have to make some change there." I don't remember which officer it was, but he and I sent a joint telegram to Mr. Hockenbeamer asking them to reconsider it. I thought it was a great mistake to reduce the dividends. Here was a corporation that had paid dividends without interruption for many years, and had for many years accumulated a modest reserve. I said, "That is what the reserve is for; in case of a bad year you can continue to pay dividends."

It is just like a man who has a large income and suddenly he loses his income, and he goes hungry because he is not earning anything.

(Testimony of C. O. G. Miller.)

I thought it was a mistake. They thought so too. But it had no effect.

Q. The dividends were reduced, I believe, in the last quarter, or the second quarter——

A. (interposing) It was reduced at the meeting in September, whatever the year was.

Q. Of 1933? A. Yes.

Q. It was not restored, I believe, until the second [576] quarter in 1936?

Mr. Phleger: The last quarter in 1936.

By Miss Calkin:

Q. During that period before it was restored, what action, if any, did you take in an effort to get it restored?

A. After the dividend had been reduced I think I made no special effort to restore it. The mistake was made, I think, in reducing it. After the dividend had been reduced, once you have done the damage, you might as well go along until everybody is satisfied.

Q. What action, if any, was taken by the North American Company, after the dividend was reduced, in an effort to get it restored?

A. One of the officers of the North American Company, I am not sure who it was, joined me in a telegram from New York to Mr. Hockenbeamer suggesting that it should be reconsidered.

The Examiner: That is the same telegram you referred to a moment ago?

(Testimony of C. O. G. Miller.)

The Witness: Yes.

By Miss Calkin:

Q. Do you know of any other action taken by the North American Company in that regard?

A. No, I do not.

Q. At whose suggestion were the dividends increased in [577] 1936?

A. I do not know. I cannot remember it now. I will say it was at the suggestion of all of the directors.

Q. Do you know what part, if any, North American took in connection with the increase of the dividend?

A. I don't know. My recollection now is it was entirely appropriate to restore the dividend to the old rate when it was done.

Q. Do you know whether or not Mr. Black advised the Board as to what North American's attitude was considering the increase of the dividend at that time?

A. I do not, but it wasn't necessary. Any large stockholder who felt the dividend was appropriate would be glad to have it restored.

Q. Can you think of any situation pertaining to the Applicant which would have been different if North American owned no stock of Applicant and had received cash for the securities of the subsidiaries of Western Power Corporation?

A. I think it would have made no difference.

(Testimony of C. O. G. Miller.)

Q. Would you say North American has never in any manner participated in the affairs of the Applicant? A. I think that is correct.

Q. Do you know who the bankers for the Western Power Corporation system were, prior to 1930?

A. I know the Anglo were the people here, but I do not [578] know the eastern people, who they were.

Q. Do you know whether or not there was any agreement as to whether or not the houses, banking houses that had participated in past financings of the Western Power Corporation would have a claim on future financing by the Applicant, or the subsidiaries taken over by the Applicant in that transaction?

A. I have no distinct recollection. My impression is that something was said that they would be considered.

Q. But you do not recall any of the houses—what is the full name of that bank?

A. The Anglo California Trust Company, it is now.

Mr. Bosley: Anglo California National Bank.

The Witness: They are out of it anyway now.

By Miss Calkin:

Q. Was that company at that time engaged in the underwriting business?

A. No; but the Fleishhackers were.

Q. What was the name of their underwriting counsel, if you know?

(Testimony of C. O. G. Miller.)

A. M. & H. Fleishhacker.

Q. I believe the testimony shows that the National City Company headed all of the Applicant's business from 1917 to 1931. Do you know how National City Company got the leadership of Applicant's financing, Mr. Miller? [579]

A. The National City Company had an office here. The National City's predecessor was N. W. Halsey & Co. and had been the original finance agents of the corporation when it was formed in 1905. It was the natural thing to run along, unless there was some special reason for a change.

Q. With whom, in the National City organization, were you acquainted in 1930?

A. I don't know. It is hard for me to remember the names.

Q. Was the National City Company ever considered a California banking house?

A. I don't—it was improper to consider it so, although it had an office here of some considerable size.

Q. You considered it a New York house?

A. Of course, it was a New York house.

Q. To what extent did the Board participate in the selection of syndicate managers prior to 1930?

A. I don't know.

Q. Would you say that the selection of the National City Company in the underwritings of the Applicant was made by Mr. Hockenbeamer or his predecessor, Mr. Creed?

(Testimony of C. O. G. Miller.)

A. About 94 percent.

Q. Do you know whether or not the change of leadership from the National City to some other banking house had ever been considered prior to the time National City Company went [580] out of business, went out of the underwriting business?

A. Oh, yes. Mr. Hockenbeamer considered it frequently. I recollect very well once he had a bid, or a tentative bid, from National City, and he mentioned to me that Dillon Read had wanted to get the business, and he was wondering, if Dillon Read came in and offered a quarter or a half point higher, whether he wouldn't have to give the business to them.

Q. Was that before or after North American acquired its interest in the applicant?

A. It was before. I remember telling him I wouldn't do it even if they offered a point higher, because it was only being done to get the business, to edge in, and I thought the business should be continued where it had been satisfactorily handled and proper compensation paid.

Q. Do you know anything about the efforts of Blyth & Co. to get the leadership of Applicant's business during the time National City Company had the leadership, if there were any such efforts?

A. Well, I don't know that there were any efforts made. I think they may have suggested they would be glad to have the business.

Q. Do you recall the first financing by the Ap-

(Testimony of C. O. G. Miller.)

plicant after the National City Company ceased to be in the underwriting business, and which financing occurred in March of 1935?

A. I don't know who handled it—was it Blyth & Co. [581] in 1935?

Q. No. That was Lazard Freres & Co.

A. Yes; that is right.

Q. Do you know how Lazard Freres & Co. got the leadership of the syndicate which purchased the $45,000,000 bond issue of the Applicant in 1935?

A. I am not sure. I can't remember his name, the head man there——

Q. (Interposing) Mr. Russell, Stanley Russell?

A. Probably so. An old friend of Mr. Hockenbeamer's, and it seems to me he had been with the National City. I think that is the way it happened. It was largely personal. You cannot take 25 people into your confidence on how you are going to make your financial bargains.

Q. Who would you say selected Lazard Freres & Co. to head that syndicate, Mr. Hockenbeamer or the Board? A. Mr. Hockenbeamer.

Q. In other words, the Board left pretty largely up to Mr. Hockenbeamer to make such selection?

A. I wouldn't put it that way. I would say that Mr. Hockenbeamer stated, recommended that this arrangement be made with these various banking groups, as to certain leadership, and that the Board

(Testimony of C. O. G. Miller.)

has an opportunity to say whether they do or do not approve.

Q. And the Board approved his recommendation? [582] A. Yes; it was a common thing.

Q. Who determined the amount of securities that would be issued at that time, and the type of security which would be issued?

A. Technically, the Board of Directors.

Q. But in the first instance who formulated the plan of refinancing?

A. I don't know—it was done in the P. G. & E. office under Mr. Hockenbeamer. Someone made an estimate of how much money was needed, how much money they wanted to have on hand, and what they thought was wise to do.

Q. Well, did Mr. Russell ever approach you in an effort to get the leadership of the Pacific Gas business? A. I have no recollection of it.

Q. Did you ever discuss with the North American people the leadership of any of Applicant's financing? A. No.

Q. Now, prior to the formation of the underwriting syndicate which purchased Applicant's bonds in March, 1935, did any representatives of any other banking house approach you in an effort to get the leadership of that piece of business?

A. I don't know. I think at least three or four various houses came, their representatives, and talked to me about it. [583]

(Testimony of C. O. G. Miller.)

Q. Do you recall which representatives of which house?

A. I can't recollect now. I always said I had nothing to do with it; that that was Mr. Hockenbeamer's job, that he was the man to talk to about it.

Q. Do you know Mr. Blyth?

A. Very well. He is a close friend of mine.

Q. Isn't it true that the firm of Blyth & Co. has headed a number of issues for Pacific Lighting Corporation? A. Yes.

Q. What period of time have you known Mr. Blyth? A. 30 years; perhaps a little longer.

Q. Do you know Mr. Ford, Mr. Bernard Ford?

A. Yes.

Q. Is he related to you? A. Yes.

Q. What is his relationship?

A. He is my son-in-law.

Q. With what firm is Mr. Ford associated?

A. Blyth & Co.

Q. Has he been associated with Blyth & Co. over some period of time?

A. I don't recollect. I think it is only six or seven years.

Q. Did Mr. Ford, or Mr. Blyth, ever talk to you, after March of 1935, concerning Blyth & Co.'s desire to get the [584] leadership of Pacific Gas business? A. Probably.

Q. What, if anything, did you tell these gentlemen?

A. I can't recollect, but I am very confident I

(Testimony of C. O. G. Miller.)

told them I would be glad to see the leadership brought to California.

Q. Would you personally have selected Lazard Freres & Co. syndicate manager of the March 1935 issue? A. I don't know, but I think not.

Q. Do you know whether or not Mr. Hockenbeamer, or any other member of the Applicant's Board, conferred with North American in regard to the selection of Lazard Freres & Co. as syndicate managers? A. I don't know.

The Examiner: We will take our morning recess for about ten minutes.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [585]

The Examiner: Ready to proceed, Miss Calkin?

Miss Calkin: Are you ready, Mr. Phleger?

By Miss Calkin:

Q. Mr. Miller, I believe the evidence shows that Blyth & Company headed the next case of Applicant's financing which was in June of 1935 on the west coast and participated in the management fee. Did you have anything to do with Blyth & Company's getting a better position in the June issue than it had in the March issue?

A. I think not.

Q. Did anyone during that period, that is, in the middle of June 1935, ever acquaint you with the fact that Blyth & Company's representatives in New York City were endeavoring to get Mr. Fo-

(Testimony of C. O. G. Miller.)

garty and Mr. Black to exert pressure on Mr. Hockenbeamer to head your business?

A. I was not aware of it.

Q. Do you recall seeing Mr. Black in California in the latter part of August, 1935, or the early part of September of that year? A. I cannot.

Q. Do you recall any conversations having had, which you had with Mr. Black prior to the time that he became president regarding the leadership of Applicant's financing? A. I do not.

Q. Do you know George Leib? [586]

A. Yes.

Q. He is associated with the New York office of Blyth & Company, is he not? A. Yes.

Q. Do you know Mr. Shurtleff? A. Yes.

Q. He is associated with the San Francisco office of Blyth & Company?

A. Yes. I might add, Mr. Leib, is a very old friend of mine, was the Captain of my camp in the Bohemian Grove until he moved to New York City. I had a very close personal relationship with him.

Q. Mr. Miller, I hand you a copy of a telegram from Mr. Leib to Mr. Shurtleff, in order to refresh your recollection, and call your attention—that is rather difficult to read. A. I can read it.

Q. Wait a minute, there is some particular part that I want; calling your attention to that portion which says, "Mr. Miller will certainly go to bat for Bernard and us".

(Testimony of C. O. G. Miller.)

Mr. Phleger: Just a moment. I move that be stricken out.

The Examiner: It may be stricken.

Mr. Phleger: How can you refresh the recollection of [587] a witness from something the witness has never seen. Have you ever seen that wire, Mr.——

The Witness: No.

Miss Calkin: Well, I think a person's recollection can be refreshed from a document, Mr. Phleger. I think if——

Mr. Phleger: Not from any document he has never seen before.

Miss Calkin: I differ with counsel's interpretation of the rules of evidence on that point.

Mr. Phleger: Maybe we can get at it some other way.

Miss Calkin: Off the record, I questioned him with reference to his contact concerning Blyth & Company.

Mr. Phleger: If you ask him if his memory is refreshed, I have no objection to it being done that way; I don't want the contents of the wire in.

Miss Calkin: No, I don't want that in either.

Mr. Phleger: Has it refreshed it, if it does refresh his memory?

The Examiner: Have you read that wire to which your attention has been directed, Mr. Miller?

The Witness: I have not read it all; it is very indistinct. I have read what Miss Calkin——

(Testimony of C. O. G. Miller.)

The Examiner: To which she has directed your attention?

The Witness: Yes. [588]

The Examiner: All right. Have you a question now?

Miss Calkin: Does that refresh your recollection, Mr. Miller, concerning any efforts which Blyth & Company might have been making as early as February, 1935, to get the leadership of this business?

A. Not particularly. I have no recollection of ever asking Mr. Drum, Mr. Creed, Mr. Hockenbeamer or Mr. Black to give their financing to any one. I have—whenever I have been asked by anyone "What do you think of so and so", or "so and so", I have always freely stated what I thought, and I have many times stated I would be glad to see the business go to Blyth & Company. I have never asked the president to change, I will say, their financing; it's not like giving group insurance or placing your pension fund where other great insurance companies can take care of you, it's done very largely for some personal reason that the agent is agreeable to you, or the people who have presented it in some special way.

By Miss Calkin:

Q. Now, I believe the Applicant had its first financing after Mr. Black's presidency in March of 1936 when it issued ninety million dollars in bonds?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Do you recall that Blyth & Company headed that piece of business? [589]

A. I think they did, but——

Q. Now, do you know how Blyth & Company got the leadership of that issue?

A. I am not sure. I think it was because Mr. Black selected it.

Q. Well, did you ever recommend the selection of Blyth & Company to Mr. Black?

A. I think not. I think, however, that Mr. Black spoke to me about it and asked me what I thought of Blyth & Company, or I think there were two or three seeking it. I said that I would be very glad to see it go to Blyth & Co.

Q. Would you say that the responsibility for Mr.—for Blyth & Company's selection as syndicate manager in the March, 1936, issue, was due to Mr. Black's choosing that house?

A. It is a little difficult to answer that with a yes or no answer. Mr. Black presumably asked other members of the Executive Committee, perhaps of the directors, what they thought of it and I would say he determined what the composite wish was.

Q. Do you know whether or not any of the directors of the Applicant were anxious that Blyth & Company replace Lazard Freres as syndicate managers?

A. I don't know; I think there was some, but I don't [590] know.

(Testimony of C. O. G. Miller.)

Q. Do you recall talking to Mr. Black about this matter in his office in the presence of Mr. Chickering?

A. I do not. I may easily have done so.

Q. I hand you—I think this is easier for him to read this—what purports to be a copy of a letter from Mr. Ford to Mr. Blyth, dated December 19, 1935, for the purpose of refreshing your memory.

A. I do not—I do not recollect the conversation, but the matter of financing was very often mentioned.

Q. Well, did Mr. Blyth or Mr. Ford during this period, that is, after Mr. Black became president of the company, urge you to recommend them as the leader of this next piece of Applicant's business?

A. My recollection is that neither of them did; both of them probably spoke to me about it. I have never—I have no recollection of them ever asking me to take any action.

Q. Well, did Mr. Leib ever make such a request?

A. I have no recollection of it. They knew perfectly well that if the matter came up how I felt. It was not necessary.

Q. And what was your feeling in that respect?

A. I was for Blyth & Company, and I am now.

Q. What were your reasons for being for Blyth and [591] Company?

A. Blyth & Company was the largest California house that could very easily do the business, it was

(Testimony of C. O. G. Miller.)

a California corporation, I had a son-in-law who was a partner, and the other two partners were very close friends of mine; I think it was a natural thing; Lazard Freres were a California house only 45 years ago, they moved away from San Francisco; there was no reason why they should have the business at the same rate. It was the natural thing to want your friends to have it if the conditions warranted.

Q. Do you think the other members of your Board felt the same way? A. I think so.

Q. In other words, it is your opinion that the leadership of Blyth & Company was more agreeable to the Board than that of Lazard Freres?

A. I am confident it was.

Q. Do you think but for Mr. Hockenbeamer, Lazard Freres would not have had the 1935 business? A. I think that is probably the case.

Q. Do you know what part, if any, North American played in the selection of Blyth & Company?

A. I do not.

Q. Did Mr. Black ever tell you that Blyth and Company was the choice of the North American Company for the [592] Applicant's business?

A. I don't know. I have no recollection of it. He might have said so.

Q. I believe the evidence shows that Dillon Read & Company had a substantial participation in the first issue of the 1936 ninety million dollar issue?

A. Yes.

(Testimony of C. O. G. Miller.)

Q. Did you know at that time that Dillon Read had long headed financings for subsidiaries of the North American Company?

A. I don't know. I have no recollection; in fact, I never paid any attention to the financing of the North American Company. Dillon Read have been in practically every large financing in the United States for 20 years.

Q. But you never knew if such were a fact that Clarence Dillon and Harrison Williams were such very close friends? A. I did not know it.

Q. Did you know why Dillon Read got a participation in the ninety million dollar issue in 1936?

A. I don't know. The supposition is, of course, you well know, every underwriter scatters it around.

Q. You don't know who is responsible for Dillon Read & Company's participation in that issue?

[593]

A. No.

Q. Would you say that Mr. Black was more or less amenable to suggestion by the Board than Mr. Hockenbeamer was on matters of financing of the Applicant?

Q. I don't know, but I would say he gave suggestion—Mr. Black gave the suggestion more hospitable reception than Mr. Hockenbeamer.

Q. Do you know who carried on the negotiations between the Applicant and Blyth & Company?

A. Mr. Black.

Q. (continuing) ——in regard to the financing?

(Testimony of C. O. G. Miller.)

A. Mr. Black.

Q. Were those negotiations carried on in New York City or in San Francisco?

A. I don't know. I thought largely in San Francisco, but it is possible they were carried on in New York.

Q. Do you know whether or not Mr. Black conferred with the representatives of the North American Company regarding the price that the securities sold by the North American Company after he became president, regarding what the price should be or what the spread should be on those issues?

A. I don't know. I think it would be likely North American Company had many many sales of securities and it was—it would be the natural thing, he may have known—[594] he may have known enough about them to, I don't know, but it would have been a natural thing to do.

Q. Dillon Read & Company, as well as Leib Keystone & Company, substantially participated in the March, 1936 issues, and did not participate in the subsequent issue of the Applicant in that year; do you know why they did not have participation in those issues?

A. I think they were not chosen to be under grouped.

Q. Do you know who made up the membership, or who determined the membership of the underwriting syndicates? A. I don't know.

Q. You don't know whether that was done by

(Testimony of C. O. G. Miller.)

Mr. Black or by Blyth & Company, the syndicate management?

A. It was probably done between them; chances are that Blyth & Company would put in anyone that the Applicant wanted in.

Q. I believe the last piece of Applicant's financing was in 1936 when fifteen million dollars of bonds were privately placed. Who determined that issue should be sold privately rather than publicly?

A. The Board of Directors or the Executive Committee or Mr. Black.

Q. And what were the reasons for placing that issue privately?

A. My recollection is it saves the registration [595] expense and, of course, it saves a lot of time; under your new rules you don't have that 20 days any more; it's not quite so bad.

The Examiner: The Amendment to the Act.

The Witness: Yes.

By Miss Calkin:

Q. To your knowledge has the North American Company in some way participated in the financing of the Applicant during Mr. Black's presidency?

A. I think it has not.

Miss Calkin: I think that is all.

Redirect Examination

The Examiner: Mr. Phleger?

By Mr. Phleger:

Q. Mr. Miller, you were asked some questions

(Testimony of C. O. G. Miller.)

with respect to the acquisition by Pacific Gas and Electric Company of certain securities from Standard Gas & Electric Company as the result of which Standard Gas & Electric Company became a substantial stockholder in the Pacific Gas and Electric Company? A. Yes.

Q. And I think you were also asked with respect to the attitude of the company upon Standard becoming a substantial stockholder. Do you remember any comments made at that time by Mr. Creed with respect to that [596] circumstance? A. Yes.

Q. What did he say?

A. The Standard Gas & Electric was the first very large stockholder in the company that was not distinctly, I will say, in the California group, and I remember Mr. Creed stating that he was glad to have an undertaking from them, that they would not interfere with the management in any way; but he said he considered that it was unnecessary. He stated something like this, "If the Standard Gas & Electric Corporation made an effort to obtain control of this company all I have to do is to stand on the sidewalk and say 'California stockholders look out; here is an Eastern company attempting to gain control of our property.'" And he said, "We would obtain proxies beyond any question." And I believe that same condition is true today.

Q. You were asked with respect to Mr. Black's method of conducting business before the Executive Committee and Board of Directors, and whether any

(Testimony of C. O. G. Miller.)

of his recommendations were ever disproved. Is it not a fact, Mr. Miller, that Mr. Black takes up with the Executive Committee all major questions of policy and discusses them thoroughly over a period with them before formulating a decision?

A. Yes.

Q. So that when Mr. Black finally arrives at a [597] recommendation or decision it is usually after the matter has very thoroughly been inquired into and the assurance of the Executive Committee and Board of Directors already sought and ascertained. Is that not true? A. That is correct.

Q. In answering the question as to whether or not you considered it desirable that a foreign corporation control the Pacific Gas and Electric Company you gave various answers. As a matter of fact, Mr. Miller, do you think that a principal located 3,000 miles away could effectively control a California public utility?

A. Not as well as it is controlled locally, I am sure.

Q. So that any principal that distance away could not do as good a job as a local one?

A. I think that is correct.

Q. You stated that you thought the views of every large stockholder would be given serious consideration by the Board of Directors in the management of the Pacific Gas and Electric Company?

A. Yes.

Q. Do you think the same would be true of the

(Testimony of C. O. G. Miller.)

recommendations and viewpoint of a small stockholder if they were meritorious? A. Yes.

[598]

The Examiner: I think he so testified, Mr. Phleger. He said every stockholder.

The Witness: Any stockholder, and especially a large one.

Mr. Phleger: That is all.

The Examiner: Any further questions, Miss Calkin?

Miss Calkin: Just one question, Mr. Miller.

Recross Examination

By Miss Calkin:

Q. There are several utility companies operating in the state of California which are effectively controlled by holding companies many miles distant, are there not A. There are some, yes.

Q. Are you acquainted with the San Diego Company which is a subsidiary of Standard Gas and Electric Company? A. Yes.

Q. That is a large—very large operating company, is it not? A. Yes.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You may be excused. Thank you, sir.

The Witness: Thank you.

(Witness excused) [599]

Mr. Phleger: Mr. McKee.

Whereupon——

JOHN D. McKEE

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. McKee, will you state your full name and your address for the record?

A. John D. McKee, M-c-K-e-e. Residence or business?

Q. Residence?

A. 3456 Washington Street, San Francisco.

Q. How long have you been a resident of California, Mr. McKee?

A. Since 1865.

Q. You were born in this state, were you?

A. Born 1865.

Q. When did your family first come to California? A. 1850.

Q. What business did your parents, or your father engage in?

A. He was in the banking business since 1850.

Q. What is your business? [600]

A. Well, I am a banking and corporation officer, and I think that is the——

Q. How long have you been in the banking business? A. Since 1884.

(Testimony of John D. McKee.)

Q. With what banks have you been connected?

A. I started with the Tallant Banking Company of which my father was cashier; and upon his death, in 1893, I succeeded him as cashier of that bank. In 1898 the business of that bank was sold to the Crocker National Bank. And in the following few months later I participated with others in the organization of the Mercantile Trust Company which is now known as the American Trust Company. I was secretary and cashier of the Mercantile Trust Company, then vice-president, then president and now I am chairman of the Board.

Q. Are you a member of the Board Committee of that bank?

A. I am, yes. Trust Committee, we call it.

Q. Trust Committee?

A. Yes, Trust Committee.

Q. What are the duties of that committee?

A. They examine the securities, or consider the list of securities that are held by the Trust Department in various trust capacities and advise the trust officer in his department with respect to purchases and sales thereof. [601]

Q. As a member of that committee do you have occasion to review the holdings of the bank as trustee consisting of shares of stock of this Applicant and also bonds of this Applicant? A. I do.

Q. State what commission you are a director of?

A. I am director of the Pacific Gas and Electric Company, Honolulu Plantation Company, Honolulu

(Testimony of John D. McKee.)

Oil Company, Pacific Portland Cement Company, Hutchinson Sugar Plantation Company, Paauhau Sugar Plantation Company, Kilawea Sugar Company, Welch & Company, and I have a number of other commssions which really are such as my own corporation, the McKee Company, the Lagunitas Development Company, operating a tract of land, and the San Geronimo Valley Water Company.

Q. And you also——

A. I think that is all.

Q. (continuing) ——act as attorney in fact for Mrs. Paul I. Fagan? A. I do.

Q. She has a large interest, has she, in this state and elsewhere? A. Yes.

Q. And you have acted in that capacity for her and her mother for many years?

A. Yes, since 1912, during the lifetime of her father, [602] beginning with the lifetime—during the lifetime of her father.

Q. And do you own shares of stock of the Pacific Gas and Electric Company? A. I do.

Q. And I will ask you by reference to Exhibit 32 to state the number of shares of stock of this company which are, or any affiliated interest you have in the Pacific Gas and Electric Company?

A. I own personally 456 shares, as attorney in fact—I am attorney in fact for Mrs. Fagan who owns 5,290 shares; I am one of the officers of the trust in which Mrs. Fagan has a life interest and which holds 1200 shares of preferred stock. The

(Testimony of John D. McKee.)

first two items were common stock. I am a trustee also for Mrs. Josephine Grant McCreary, and that trust owns 580 shares of preferred and 530 shares of common; I am trustee for a similar trust for Mrs. Edith Grant Ordway that holds the same amount, 580 preferred and 530 common; I am a director of Grant Company which owns 2440 shares of preferred; I am chairman of the Board of American Trust Company which Trust Company holds in various trust capacities 24,281 shares of preferred and 25,162 of common.

Q. Do you own any shares of North American Company, Mr. McKee? A. No. [603]

Q. Have you ever owned any shares of that company? A. No sir.

Q. Are you now, or have you ever been substantially interested personally in any eastern corporation? A. No.

Q. Your interests have always been primarily in California western enterprises, is that not so?

A. That is right.

Q. Do you know of anyone who does own any stock in the North American Company?

A. I do not.

Q. When did you first become a director in the Pacific Gas and Electric Company?

A. In 1914.

Q. Will you state the circumstances under which you became a director?

A. Mr. Frank G. Drum at that time was presi-

(Testimony of John D. McKee.)

dent of the company and he invited me to take a place on the Board, there being some vacancy.

Q. Have you remained a director ever since that time? A. I have.

Q. Were you closely associated with Mr. Drum during his lifetime? A. I was.

Q. State generally what that association consisted [604] of?

A. Mr. Drum was a stockholder and a director in the Mercantile Trust Company, which, as I said, was organized in 1899, and early in the 1900's he obtained a substantial interest in the California Gas & Electric Corporation, which is one of the predecessors of the Pacific Gas and Electric Company, which I know about because our bank handled the transaction as escrow holder. That either was a personal holder or representative of someone else; I am not sure as to that. But he was vitally interested in the Pacific—the Pacific Gas and Electric Company and its predecessor companies.

Q. Mr. McKee, do you know the history of the formation of the Pacific Gas and Electric Company and the activities of some of its predecessors and were you acquainted with some of the principal actors?

A. Yes. The company had its beginning in the establishment by Eugene de Sabla of the Nevada Power Company and I knew de Sabla very intimately. Then he and John Martin created the Yuba Electric Power Company which absorbed the Ne-

(Testimony of John D. McKee.)

vada and those companies finally were merged into the Bay Counties Power Company, which was the first of the companies to extend the line to reach Oakland; then, following the Bay Counties was the California Gas Electric Corporation, then when they operated the San Francisco and Oakland—[605] San Francisco Gas Company, Oakland Gas Company, they changed the name to the Pacific Gas and Electric Company and, as I stated, the Mercantile Trust Company was formed in 1899, and the certification of the issue of the Yuba Electric bonds was the—was the first of that kind of business that we executed, and there was a continuous relationship between the power company and the bank ever since.

Q. Did you know Mr. de Sabla and Mr. Martin personally? A. I did, yes.

Q. What other individuals were active in the early years of the Pacific Gas and Electric Company?

A. Why, there was—Conlisk was secretary, Dick Hotaling was treasurer, then and de Sabla and Martin were the chief executives.

Q. Remember Mr. Britton?

A. Oh, yes, he came in with the Oakland Company; yes, Mr. Britton was the first president of the Pacific Gas, I think he came in with the Oakland Company.

Q. With what regularity have you attended

(Testimony of John D. McKee.)

meetings of the Board of Directors of the Pacific Gas and Electric Company?

A. I think, aside from the several months I spent in the hospital in 1934 and 1935 and the recent trip which I [606] made to Honolulu, I missed very few meetings. I don't think I missed as much as one a year.

Q. Have you always taken an active interest in the affairs of the company?

A. I have.

Q. Are matters which comes before the Board of Directors freely and fully discussed?

A. Yes sir.

Q. In your opinion, does any director dominate the meetings of the Board? A. No, does not.

Q. Have you ever hesitated at Board meetings to freely express your views on the subjects brought before the meetings? A. No sir.

Q. If I were to tell you that the record of the company shows that you have attended 113 meetings of the Board of Directors out of their 128 held since January 1, 1930, would you be surprised?

A. That is 15 I had missed.

Q. Yes.

A. Well, I don't think I have missed more than that.

Q. 88 per cent record of attendance?

A. Yes sir.

Q. Were you acquainted with Mr. Frank Dame during [607] his lifetime?

(Testimony of John D. McKee.)

A. No, I may have met him at the meetings; I had no acquaintance that extended beyond that.

Q. Were you acquainted with Mr. Edward Gruhl during his lifetime?

A. No. The same situation with respect to him.

Q. Were you acquainted with Mr. Doolittle?

A. Only met him at the meetings.

Q. Are you acquainted with Mr. Herbert Freeman?

A. No, I think I never saw Mr. Freeman.

Q. Are you acquainted with Mr. James F. Fogarty? A. Only met him at one or two meetings.

Q. How many times in the aggregate would you say that you have met or talked with those gentlemen? A. Not more than once or twice.

Q. At the times that you met them did you discuss with them Pacific Gas and Electric Company affairs?

A. Well, as I say, I met them at principally—I don't—couldn't recall meeting any of them except during the meetings of the Pacific Gs, and of course, in the meetings we discussed all these matters, but I had no personal discussion with any of them.

Q. Have you ever communicated with Mr. Dame, Mr. Gruhl, Mr. Doolittle, Mr. Fogarty or Mr. Freeman, or any of them, by letter, telegraph, or any other means? [608] A. I have not.

Q. Did any of those gentlemen ever request you

(Testimony of John D. McKee.)

to act in any particular manner as a director of the Pacific Gas and Electric Company.

A. No sir.

Q. Were you acquainted with Mr. Guy Earl in his lifetime? A. Yes sir.

Q. He was a director, for a time, was he not, of the Pacific Gas and Electric Company?

A. Yes sir.

Q. Was he a particularly active director?

A. I never observed anything, any of his actions about the Pacific Gas except during the attendance at meetings he was accustomed to making notes of what took place.

Q. Was he very active in proposing policies or measures for consideration?

A. No, he participated in all the discussion freely but he did not initiate particularly or dominate at all.

Q. Was he any more active than any of the other directors? A. No, no more than I was.

Q. Did you ever discuss the business affair or affairs of the Pacific Gas and Electric Company other than at directors meetings of the Pacific Gas and Electric [609] Company? A. I did not.

Miss Calkin: You mean with Mr. Earl?

Mr. Phleger: With Mr. Earl, yes.

The Witness: With Mr. Earl, yes.

By Mr. Phleger:

Q. With Mr. Earl. Did Mr. Earl ever ask you

(Testimony of John D. McKee.)

to vote in any particular way or take any particular action as a director? A. No.

Q. Have you ever had any request from any officer or director or representative of the North American Company to vote in any particular way or take any particular action as director?

A. I recall one instance.

Q. What was that?

A. The—I can't recall the date. I did not bring any notes with me. But at the time the dividend was decreased from $2 per share, at the rate of $2 per share to $1.50, the quarterly dividend, I received a—after that action was taken I received a telegram from Mr. Black and Mr. C.O.G. Miller jointly saying they thought that was a mistake, that it—the mistake might be repaired by having a special dividend, additional special dividend of 12½ cents, which would make an increase of 37 to 50 cents for [610] the quarter, and asked me if I would attend a meeting, if one was called, and favor that, to which I replied that I thought that the action that was taken was fixed and was the proper one to take under the circumstances, and my conclusion was the matter better rest as it was.

Q. Do you remember who was among the directors of the Pacific Gas and Electric Company in September 1933, that voted to reduce the dividend?

A. Mr. Hockenbeamer was president at that time, he recommended the difference on the common

(Testimony of John D. McKee.)

stock, 50 cents on the quarter, then Mr. Frank Anderson, I think, said—well, then, I think the last time we talked about it—oh, we were going to consider something less than that. Then Mr. Anderson proceeded to argue with the earnings being a little disappointing, he thought the dividends should be for a lesser amount, and that was debated back and forth at some length and finally a motion was made and carried that the dividend be declared of 37½ instead of 50, and Mr. Anderson voted to do it. I voted for it; I think Fred Elsey voted for it. I don't remember so much about the others.

Q. Was Mr. Crocker at that meeting?

A. Yes, I think he was. I am not sure about that.

Q. With the exception of that incident you have no recollection of ever having any communication or request [611] with respect to any pending matter from the North American Company or any of its officers or agents?

A. I did not—what was that question?

Q. I say with the exception of the incident you mentioned you have no recollection——

A. (interposing) That is the only case, yes.

Q. How long have you known Mr. D. H. Foote?

A. Can you tell me when he was elected secretary, about a year or so before he was elected secretary of the company; I can't recall that year.

Q. You have known him at least since 1906?

A. Oh, yes.

(Testimony of John D. McKee.)

Q. How long have you known Mr. C. O. G. Miller? A. Over 50 years.

Q. How long have you known Mr. Norman D. Livermore?

A. I have known him for 40 years.

Q. How long have you known Mr. Allen L. Chickering?

A. I have known him for many years, 30 or 40 years anyway.

Q. How long have you known Mr. Downing?

A. I have known him since he was a star on the football team at Stanford in the early nineties.

Q. How long have you known Mr. Coghlan?

A. John Coghlan?

Q. Yes. [612] A. I would say 40 years.

Q. How long have you known Mr. McIntosh?

A. Known him 40 years—let me see, between 35 and 40 years.

Q. How long have you known Mr. Wishon?

A. Oh, 20 years.

Q. How long have you known Mr. Silas H. Palmer?

A. I have known him over 40 years.

Q. How long have you known Mr. William W. Crocker? A. 45 years. William W.?

Q. Yes.

A. I thought you said William H.

Q. William W.

A. William W.? I would say 20 years.

(Testimony of John D. McKee.)

Q. And how long had you known his father before him?

A. Known him since 1894 or 95, 45 years.

Q. How long have you known Henry D. Nichols?

A. I have known him 40 years.

Q. Have you known Mr. Wishon over a period of years? A. Yes.

Q. Before he became president of the company?

A. Yes sir.

Q. Was Mr. Frank B. Anderson active in the affairs of the company during his lifetime? [613]

A. Yes, he was a member of the Executive Committee, and I think took quite an active interest in all matters pertaining to the company.

Q. Did you know Mr. Fred Elsey during his lifetime? A. Very well.

Q. How many years had you known him prior to his death?

A. Well, I have known him since the late nineties, he died two or three years ago; that would be about 40 years.

Q. Was he active in the affairs of the company?

A. He was.

Q. Mr. John Drum you knew also, did you not?

A. Yes sir.

Q. Was he active in his lifetime in the affairs of the company?

A. Yes, he was up to—I think about the time

(Testimony of John D. McKee.)

that Mr. Hockenbeamer's administration began, he was up to about 1820, 1829, 28 or 29.

Q. 1928 or 1929?

The Examiner: 1929?

The Witness: 1929.

By Mr. Phleger:

Q. Yes. He retired, this record shows, early in 1930. [614] A. Was it 30?

Q. Do you recall in 1930 when the Pacific Gas and Electric Company acquired the North American Company, the securities which it held in the Great Western Power Company of California and the San Joaquin Light & Power Company?

A. I do.

Q. Had the question of the acquisition of the Great Western Power Company and its properties been considered over a considerable period, do you know?

A. Yes, I think that had been considered very seriously during Mr. Creed's administration, and then it—nothing came of it, and then I think during Mr. Hockenbeamer's administration that it was revived and finally concluded.

Q. That was sometime in 1930?

A. About 1930, yes.

Q. Do you recall whether in the course of the discussions relative to the acquisition of those companies from the North American the future status of the North American Company as a stock-

(Testimony of John D. McKee.)

holder in the Pacific Gas and Electric Company was discussed?

A. I remember Mr. Hockenbeamer made a statement that—of course, they were acquiring these properties and giving common stock of the Pacific Company's for it, and what seemed like a large amount; he said they had given very serious consideration to whether there was any risk [615] or impropriety in one stockholder—one group having such a large amount of stock, they felt there was no risk in it, but they had given very careful consideration to that feture, and that was for the purpose of assuring other members of the Board as to how they felt about it.

Q. And that statement was made by him before the Board approved the act? A. Yes sir.

Q. Mr. McKee, how long have you known Mr. James B. Black?

A. Since about 1919; that would be 31—over 20 years.

Q. What position did Mr. Black hold when you first met him?

A. He was the general manager or, perhaps, had a more minor situation when I first knew him of the Great Western Power Company, and we had service from the Great Western Power Company in connection with some properties near Napa in which I was interested and we dealt with him as to the furnishing of that service. That was just one incident.

(Testimony of John D. McKee.)

Q. And you have known him, of course, ever since that first meeting? A. Oh, yes.

Q. Following that first meeting did you come more [616] or less frequently in contact with him?

A. I did.

Q. And did you observe his work as an officer of the Great Western Power Company?

A. I think it's right to say, properly say, I did, yes.

Q. Yes. Was that company in active competition with the Pacific Gas and Electric Company?

A. It was, very.

Q. And were its activities frequently the case for discussion in the Pacific Gas and Electric Company's directors meetings?

A. I can't recall that; I wouldn't say that was the——

Q. However, as a director of the Pacific Gas and Electric Company you were conscious, were you not, during all those years, of the competition of the Great Western Power Company?

A. Yes, we had a—we had an active and efficient and aggressive competitor, no doubt about that.

Q. And the actions of that competitor were managed during the early twenties by Mr. Black, were they not? A. Yes sir.

Q. By the way, in speaking of people in the power busines, you have been an executive in the power business yourself, have you not? [617]

A. Yes.

(Testimony of John D. McKee.)

Q. Will you state what your connections have been with public utilities companies other than the Pacific Gas and Electric Company?

A. I had a very large investment myself, and representing the matters of Mrs. Fagan and my friend, J. B. Grant, which they had in the company in the California-Oregon Power Company, I became interested in looking into the matter and finally becoming quite active in its control, and after a number of years of hard struggle, didn't have enough money, didn't have enough earnings, and had partly completed the plants, and finally, however, we managed to complete the principal plant on the Klamath River that we were working at, and I think partly as a defense measure—in 1917 or 18 we succeeded in making a contract with the Pacific Gas for delivery power wholesale which gave an immediate output for that plant, which would have taken a number of years to have worked up for the use of the power, and finally we were able to put the company on its feet and it began to prosper.

In 1926, then, we sold the company to the Standard Gas & Electric Company and all of the original investors were able to receive back what they put in, and had interest and new profit besides.

Q. You were an officer of that company? [618]

A. I was president of the company, yes; I became president of the company.

Q. How many years did you serve as president?

(Testimony of John D. McKee.)

A. Ten years, 10 or—8 or 10 years.

Q. Did you become familiar during that period with the financial—— A. I was.

Q. (continuing)—the matter of financing that company? A. I did, I had to be——

Q. (continuing) ——And dealt with Board underwriters and sold securities?

A. I had practically the whole job to do on that.

Mr. Phleger: If your Honor please, I think this is an appropriate time to adjourn.

The Examiner: All right, we will have the noon recess now until 2:00 o'clock this afternoon.

(Whereupon at 12:10 p.m. an adjournment was taken to 2:00 o'clock p.m. of the same day.) [619]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p.m.)

The Examiner: The hearing will resume, please. Whereupon——

JOHN D. McKEE

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination (Resumed)

By Mr. Phleger:

Q. Mr. McKee, how often between 1930, when the Pacific Gas and Electric Company acquired the

(Testimony of John D. McKee.)

Great Western and San Joaquin from the North American, and November in 1935, when Mr. Black became president, did you see Mr. Black?

A. I think Mr. Black had taken, or made his residence in New York before 1930, but he made trips to San Francisco at intervals, once or twice a year, and I think he never came here without calling me on the telephone and dropping in to say "hello" just as a matter of acquaintance or friendship. We usually arranged to go to lunch together and have a little gossip about things of mutual interest. I would say twice a year during those five years.

Q. Did he ever during that period ask you to take any action as a director of the Pacific Gas and Electic Company?

A. No, sir. He would say, "How is the company doing," or "Our company is getting along pretty well, I am pleased with [620] the progress," or something of that sort, but he never asked me to do anything on his behalf, or on behalf of his company.

Q. Did these discussions relate specifically to the business of the company or were they general?

A. General.

Q. Do you recall when Mr. Hockenbeamer passed away?

A. Yes. He passed away, I think, it was on Armistice Day in 1935.

Q. Had he been ill for any length of time before his death?

(Testimony of John D. McKee.)

A. No. Paul Downing called me up one morning and said Mr. Hockenbeamer had passed away. I was very much surprised and shocked.

Q. His death had not been anticipated?

A. No.

Q. After his death what took place with reference to the selection of a successor?

A. The next day, within two days of his death Mr. C. O. G. Miller, who was the senior member of the Executive Committee, called me at my office and said he had been giving the matter of a successor to Mr. Hockenbeamer very careful thought; that it was a thing that couldn't be delayed. He said that it was his idea that we ought to select Mr. Black. That was a new thought to me. I suggested to him that we ought to consider, if there were four or five possible candi- [621] dates we should consider all of them so that by a process of elimination we could settle down on the final one.

There was no commitment on my part at that conversation.

Several days afterwards a meeting took place in the President's office of the American Trust Company—Mr. Elsey was then president of the bank—at which Mr. Miller, Mr. Elsey, Mr. Livermore, who were members of the Executive Committee, William H. Crocker and myself were present. We discussed the matter for, I suppose, an hour. Finally we were in agreement unanimously that we should recom-

(Testimony of John D. McKee.)

mend to the Board that Mr. Black be invited to accept the position.

I might say I think the other directors, Mr. McIntosh, and Mr. Chickering, were out of town or weren't available.

That meeting was attended by all of the directors in San Francisco, outside of the members of the staff, excluding Mr. McIntosh and Mr. Chickering.

Q. Was anything said at that meeting to the effect that Mr. Black would be particularly desirable because he was an officer of the North American Company?

A. No. The discussion, we got down to Mr. Black, and we covered such of his career and experience as we knew about. We had known him here prior to 1930, 1928, whatever it was, as the active competitor that you referred to this morning, and he had been brought up in the west and was accustomed to western ways, and had good ability at public relations, and [622] was a good operator, and we know that he had spent several years in the east where he had had experience with the financial systems back there, and we concluded that his career had been in that way rounded out so that he would be able to handle all phases of the job.

Q. Was his age a factor?

A. Yes. He was a middle-aged man and had the advantage of having more years before him than any of the preceding presidents, and had good health and energy.

(Testimony of John D. McKee.)

Q. Mr. McKee, in your decision to support Mr. Black's selection were you subjected to any influence of any kind or character? A. No.

Q. Was your decision your own decision based upon the exercise of your own judgment?

A. Absolutely.

Q. In connection with Mr. Black's selection, had you been communicated with, directly or indirectly, by the North American Company?

A. No. Mr. Miller spoke to me the day I mentioned, and then I chatted some with Fred Elsey, who is my close associate, and next was the meeting in the bank office of these five persons. I had no communication with anybody else.

Q. As a director of the Pacific Gas & Electric Com- [623] pany have you felt perfectly free in exercising your judgment as a member of the Board of Directors? A. I have.

Q. Has anyone ever made an attempt to control your judgment as such a director?

A. No, sir.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company? A. No.

Q. If the North American Company were to

(Testimony of John D. McKee.)

attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company, would you oppose such attempt? A. I certainly would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt? A. I think they would.

Q. In the event that the North American Company were to attempt to control or influence the management or policies [624] of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I think it would not be able to do so.

Q. If the North American attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. I think it would not be. I think, on the scheme of cumulative voting, if there was a very large representation at the annual meeting they would be able to elect two or three directors, but if there was only 50 percent representation, 51 percent representation of stock present, they wouldn't be able to elect with their holdings more than five directors.

You asked whether they could secure other stock?

Q. Yes.

(Testimony of John D. McKee.)

A. I don't know about stock held in the east by banks as collateral or otherwise, but I think the vast number of Pacific Coast stockholders would be very much incensed or outraged at any such attempt and I do not think it would get any support from any of those people.

Q. As long as the present management is doing an efficient job do you think there is even a remote possibility of the North American Company being able to secure control? [625]

A. I would say not. In fact, I never thought of it in that light, but I am sure it would not be.

Q. Mr. McKee, do you recall during all the time that you have been a director any statement in a meeting of the Board as to what the attitude of the North American Company was with respect to any pending matter, with the single exception of the dividend action in 1933 that you have already testified to? A. Nothing.

Mr. Phleger: That is all.

Cross Examination

By Miss Calkin:

Q. Mr. McKee, do you own any of the securities of any of the subsidiaries of the North American Company? A. No.

Q. Are you familiar with the North American Holding Company's system?

A. I have glanced over the annual report from

(Testimony of John D. McKee.)

year to year, just as a matter of interest, but I haven't got an intimate recollection of it.

Q. Do you own any of the securities of the Potomac Electric Power Company? A. No.

Q. Of the Cleveland Illuminating Company?

A. No. I own no public utility securities of any kind [626] that are organized outside of California.

Q. Were you ever associated with Western Power Corporation, or any of its subsidiaries prior to 1930? A. No.

Q. You never held a financial interest in that holding company system? A. No.

Q. As a director of the Applicant what contacts do you have with the Vallejo Electric Light & Power Company? A. Vallejo?

Q. Yes. A. None.

Q. Are the operating problems of that company discussed at your Board meetings, that is, the Board meetings of the Applicant?

A. No. I think there has been a request for authorization of proxies to vote at some meeting of the Vallejo Company. That is the only thing I recollect.

Q. Do you know who operates that company and who determines its policies? A. No.

Q. What was the extent of your participation in the negotiations which culminated in the acquisition by the Applicant of the securities of the subsidiaries of the Western Power Corporation? [627]

A. I didn't have any participation in that.

(Testimony of John D. McKee.)

Q. Who carried on those negotiations, if you know?

A. Mr. Hockenbeamer and his immediate associates in the organization carried on the negotiations on behalf of the Pacific Gas and Electric Company, and reported at regular frequent intervals to the Board as to the progress being made.

Q. Do you know who represented the North American Company in those negotiations?

A. I know Mr. Black did represent them, but I can't say who, in addition to him. I presume there was a group.

Q. With reference to the acquisition of the securities of the Applicant by the Standard Gas & Electric Company in about 1927, wasn't it, do you recall that company having been requested to give a written assurance as to its participation in the affairs of the Applicant if the deal was consummated?

A. I can't recall that. I have forgotten even whether that was in Mr. Creed's administration or Mr. Hockenbeamer's.

Q. I believe it was during Mr. Creed's administration.

A. Mr. Creed died in 1927, somewhere around in there, I believe.

Mr. Phleger: That was just before his death.

By Miss Calkin:

Q. You don't recall what assurances the Standard Gas & Electric Company gave in regard to——

(Testimony of John D. McKee.)

A. (interposing) I don't remember anything about that. [628]

Q. Do you recall what agreement was entered into between the Applicant and the Standard Gas & Electric Company, if any, regarding the disposition by the Standard Gas & Electric Company of the securities of the Applicant? A. No.

Q. But the future participation of the North American Company, in the event the Western Power Corporation acquired a substantial block of the common stock of the Applicant, was a matter of discussion at the time these negotiations were carried on?

A. Yes. That, of course, was a very much larger issue of stock than any previous occasion and Mr. Hockenbeamer, of his own initiative, I would say, assured the Board, or advised the Board that while this was a large block of stock going out in one ownership that he felt that there was no risk or danger at all of its being used to the disadvantage of the Pacific Gas and Electric Company or that there would be any problem in the future.

Q. Did the Board request Mr. Hockenbeamer to get an expression of opinion on that subject from the representatives of the North American Company?

A. I think not; not that I know of. I would think not.

Q. Just what did Mr. Hockenbeamer tell the Board that you now can recall regarding any assur-

(Testimony of John D. McKee.)

ance, or any representation that the North American people made at that time? [629]

A. He said that in his judgment there would be no risk in giving out in one holding, to one holder, this large amount of stock; that there would be no effort made to dominate or control the actions of the Pacific Gas and Electric Company from this long distance from the east.

Q. And you, as a member of the Board, took that into consideration in voting for the acquisition of the securities of the Western Power Corporation subsidiaries?

A. Yes. That helped to satisfy me that it was a safe and desirable thing to do.

Q. Did you feel apprehensive that North American might attempt to dominiate the affairs of the Applicant upon its acquisition of a large block of its stock?

A. No. I never was apprehensive about it. I assumed it would not take place, but I was very glad to hear the statement that Mr. Hockenbeamer made.

Q. Now, Mr. Black made no representations to the Board in connection with that matter at that time?

A. No. He never appeared before the Board to my knowledge, and I know of no communication that he sent to that effect.

Q. You had no discussions with any other representatives of the North American Company on the question of the acquisition of these securities?

(Testimony of John D. McKee.)

A. No. [630]

Q. What arrangements, if any, were made at the time the negotiations were being carried on in regard to North American's representation upon Applicant's Board in the event the deal was consummated?

A. Mr. Hockenbeamer advised the Board, as I recollect it, that North American would be entitled to representation on the Board, either of two or three members.

Q. What about the Executive Committee?

A. And a member on the Executive Committee.

Q. Do you recall who North American's representatives on the Applicant's Board were?

A. Let me see—there was Mr. Dame and Mr. Gruhl who were the first ones. And I think there was Mr. Freeman and Mr. Fogarty. Who is the other one?

Q. Mr. Black was one of the first directors, was he not?

A. Yes. Mr. Black came on the Pacific Gas Board in 1930.

Q. And Mr. Earl?

A. No. Mr. Earl, I think, represented the Standard Gas interests.

Q. You never considered Mr. Earl a representative of the North American Company?

A. No. I think he represented the—wait a minute.

Q. Was Mr. O'Brien on your Board at that time? [631]

(Testimony of John D. McKee.)

A. Mr. Earl was on the Great Western——

Q. (interposing) Mr. John J. O'Brien was the representative of the Standard Gas & Electric Company, wasn't he?

A. Yes. Mr. Earl was Vice-President of the Great Western, I think it was the Great Western, and came on the Board as the representative of that interest.

Q. And he also represented that same interest on the Executive Committee? A. Yes.

Q. How many representatives does North American now have on your Board?

A. I think they have two members, Mr. Fogarty and—what is the name of the other one?

Q. Mr. Freeman?

Mr. Phleger: Mr. Freeman.

A. (continuing) Freeman, there were five of them, Dame, Gruhl, Fogarty—and who was the other one?

Mr. Phleger: Doolittle?

The Witness: Doolittle; yes, sir.

Mr. Bosley: Those were New York people who were members of the Applicant's Board at different times.

The Witness: I think the present directors are Fogarty and Freeman.

By Miss Calkin:

Q. But at one time, and prior to Mr. Earl's death, the [632] North American Company, I believe evidence shows, had three representatives on

(Testimony of John D. McKee.)

the Board, Mr. Earl, Mr. Black remaining on most of the period, and Mr. Dame and Mr. Gruhl and Mr. Doolittle serving at different times, along with Mr. Black and Mr. Earl? A. Yes.

Q Do you know why the North American now has only two representatives on the Board, whereas under the agreement entered into between the company and Mr. Hockenbeamer it was entitled to three members?

A. No. As a matter of fact, we see those gentlemen so seldom that they are almost myths. Whether they have a representative or not never really made any great impression on me.

Q. Do you recall any discussion which occurred just prior to the time of Mr. Palmer's selection on the Board to the effect that North American would not designate a third member so as to leave a vacancy which could be filled by Mr. Palmer's election? A. No.

Q. Mr. Palmer is not considered a North American Representative?

A. No. He is a Californian. He is a large stockholder and a very able man experienced in construction lines, and so forth, and a very good man for the company. I think he was [633] selected because he would be an asset to the company.

Q. You never heard any discussion to the effect that prior to his selection North American was requested not to put a third member on the Board?

A. No, I didn't hear that.

(Testimony of John D. McKee.)

Q. Has anyone representing the North American Company ever told you that its representation on the Board was not as important with Mr. Black as president as it was during Mr. Hockenbeamer's lifetime?

A. I never had any conversation with any representative of the North American Company?

The Examiner: Did you hear anyone else make such a statement?

The Witness: No one ever made such a statement to me.

By Miss Calkin:

Q. Do you consider Mr. Black as representing North American on the Applicant's Board at the present time? A. I do not.

Q. What do you know about the selection of the proxies for the annual stockholders' meeting of the Applicant?

A. I think, as it is quite customary, as a matter of routine with all California corporations, they name a committee of two or three of the directors or officers to act as a proxy.

Q. Who names that Committee?

A. I think the matter is referred to the Board for [634] approval before the notices are sent out. I think the proxy notice, and the form of the proxy is presented at a meeting of the Board, and the Board acquiesces in it.

Q. Would it be fair to say that the president selects the names of the persons who act as proxies?

(Testimony of John D. McKee.)

A. He might say, "Let's send out the same form of proxy." But that he designates the personnel of the Proxy Committee without reference to anybody else, I would say "No".

Q. Do you know who makes up the slate of the directors to be voted for by the proxies?

A. I don't recall any annual meeting at which the former incumbent Board was not re-elected, was not nominated and re-elected.

Q. So that has never been a matter of much discussion?

A. No. The changes have taken place between annual meetings, I think entirely so.

Q. Does Mr. Black advise the Board as to who North American's nominees for directors for the ensuing year will be at the time the slate of directors to be voted for by the proxies is made up?

A. I think when Mr. Fogarty and Mr. Freeman were elected on the Board their names were suggested by Mr. Black as being appropriate; but when the proxies were being sent out and the annual meeting was held for the purpose of re-electing directors, I don't think that subject was mentioned at all because [635] we carried all the same names, fifteen persons.

Q. In other words, in the absence of advice by the North American Company as to any change it would want as its representatives, you assume Mr. Fogarty and Mr. Freeman would be included in the list?

(Testimony of John D. McKee.)

A. Yes. Those two names would be included at each annual meeting if there was no wish expressed to the contrary.

Q. Does Mr. Black ever advise the Board as to North American recommendations on a particular problem when he submits it to the Board for consideration?

A. I never heard any such recommendation.

Q. Would you say that he had never done so?

A. Not when I was present at a meeting. I have been to, as you know, most of them.

Q. Since you have been a director of the Applicant have you ever been advised from any source what North American's wishes were with respect to a particular matter, other than the dividend declaration which you testified about?

A. No, I have not.

Q. Does the Board ever ask Mr. Black whether he has conferred with North American's representatives and what its suggestions have been in regard to a particular problem?

A. I would say no.

Q. What weight would you give to a suggestion made by the North American Company, in view of the fact that that [636] company is its largest stockholder, if such a suggestion or recommendation should be made by North American?

A. I would have an open mind and would give whatever it was the best consideration I could.

Q. Would the recommendations of that company

(Testimony of John D. McKee.)

be entitled, in your opinion, to greater consideration than those recommendatons if made by any other stockholder, in view of the position of the North American Company in the utility field?

A. I would feel that I should consider them very seriously on the basis of merit.

Q. Did Mr. Hockenbeamer ever advise the Board of recommendations which he had received from the North American Company on problems pertaining to the Applicant?

A. No, not to my knowledge.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president of the Applicant? A. No.

Q. To your knowledge has the Board ever disapproved of matters submitted and urged by Mr. Black? A. No.

Q. Would you say that the relationship between the Board and Mr. Hockenbeamer was equally harmonious during Mr. Hockenbeamer's presidency?

A. It was. Mr. Hockenbeamer first appeared in the [637] company about 1906 or 1907, when the company was in great difficulties, and through his great ability of financing, and through his initiating the sale of preferred stock, he was largely instrumental in the subsequent prosperity of the company. The company owes him a great debt of appreciation, I always felt; and between him and the Board, as between Mr. Black and the Board,

(Testimony of John D. McKee.)

there was, I think, a relationship of not only admiration but very cordial friendship.

Q. Do you, as a director of the Applicant, feel free to act on any major problem which might come before the Board, without receiving North American's reaction to that particular problem?

A. I do.

Q. Have you, on your direct examination, testified as to everything that you know concerning Mr. Black's selection as president of the Applicant?

A. Everything that I have any direct knowledge of. I think that I heard Mr. Miller advise the Board, or a group of us, that after we had agreed that we would like to advise Mr. Black to come, that he would telephone or had telephoned to Mr. Fogarty to see if he could secure Mr. Black's release.

Q. Was Mr. Miller's conference with the New York people after the meeting in Mr. Elsey's office that you have testified about?

A. It followed that meeting; yes. [638]

Q. Followed that meeting? A. Yes.

Q. Was anyone else specifically considered for the presidency of the Applicant after Mr. Hockenbeamer's death?

A. Well, of course, there were members of the organization, and if it had been just a matter of seniority in the organization, or moving one man forward when another man dropped out, Mr. Downing would have been next in line and there might have been somebody next to him. So there was no

(Testimony of John D. McKee.)

escaping considering the name of Mr. Downing, who would have been an excellent man for the position, but I think the principal argument there was that we wouldn't be strengthening the company. We would have lost a good man and just closed up the ranks, instead of getting someone else. There was ample opportunity for the activity and abilities of both, and we figured we wanted to add something to take the place of Mr. Hockenbeamer, and not simply shorten the ranks and then be at that disadvantage.

Q. Those matters were discussed between you and Mr. Elsey and Mr. Miller?

A. Yes; discussed at these informal talks with Mr. Miller and at the meeting I speak of. I suppose other directors talked among themselves about it.

Q. Before the Board met on the occasion on which it selected Mr. Black as president, which I believe was November [639] 20, 1935, had all of the outside directors of the company, that is, those who were not officers of the company, were they pretty much in accord as to Mr. Black's selection?

A. Well, that would be Mr. McIntosh and Mr. Chickering. The only two not in this meeting were Mr. McIntosh and Mr. Chickering. As soon as they had a chance to discuss it with them they were in agreement. The other directors were in New York. I am speaking now of those outside of Mr. Downing, Mr. Foote and Mr. Coghlan.

Q. So all of the directors who were not em-

(Testimony of John D. McKee.)

ployees of the company were in accord prior to the meeting of the Board at which Mr. Black was selected?

A. Yes.

Q. Was it possible that Mr. Black, because of his past association with the North American Company and its subsidiaries, might be influenced and dominated by North American considered and discussed between the directors prior to his selection?

A. No, I think not. I think it is safe for me to say that at our little meeting we were interested only in getting the best man we could for the Pacific Gas, and what kind of service he could render to the Pacific Gas as an individual.

Q. Did you personally feel that if Mr. Black was made president of the company that such would result in a closer contact between the North American Company and the Pacific [640] Gas and Electric Company than had existed under Mr. Hockenbeamer's presidency?

A. You say a "closer contact"?

Q. Yes.

A. No. I assumed that he would just cut loose from the North American and affiliate himself with the Pacific Gas.

Q. Before Mr. Black was offered the position did you receive any assurances from him, directly or indirectly, as to what his future attitude toward North American recommendations might be?

A. No, I did not. In fact, I didn't meet him, or speak to him, or communicate with him.

(Testimony of John D. McKee.)

Q. I mean, Mr. Miller never advised you that he had taken up such a matter with Mr. Black?

A. No. Between the time Mr. Hockenbeamer died and Mr. Black's election, I had no communication with him, or with anybody else on his behalf, on that or any other subject.

Q. Do you think that it would be possible for North American to exert a very substantial influence over the Applicant's management and policies if such an influence were exerted by it over Mr. Black even though North American representatives never attended Board meetings, or had any other contacts with the other directors of the company?

A. No; I think they could not.

Q. Why do you make that answer?

A. Now, you are speaking of influence on the Board of [641] Directors, or the company as a——

Q. (interposing) I mean if North American exercised a very substantial influence over Mr. Black, could it by so doing substantially influence the policies and management of the Applicant?

A. Well, you asked me, I think, if the directors had overruled Mr. Black in any of his proposals, and also what the relations were between him and the Board. When I said that the Board had not overruled him to my knowledge, and the relations are cordial, with mutual respect and esteem, but at the same time I am sure that if Mr. Black proposed anything which the directors had any suspicion was not sincere or for the best interests of the company,

(Testimony of John D. McKee.)

or dominated by the North American, that he would find resistance, effective resistance. There would not be that happy family atmosphere that now prevails.

Q. Was the fact that the Board felt that North American should play a greater role in Applicant's activities one of the factors in your selecting, or the Board selecting Mr. Black as Mr. Hockenbeamer's successor?

A. Not in the slightest degree.

Q. And you did not consider such an inevitable occurrence if he were selected?

A. We did not.

Q. Have there been any major changes in the operating [642] or financial policies of the Applicant after Mr. Black's presidency?

A. I think practically none. You speak of "financial". A number of our bond issues have been funded and renewed at lower rates of interest, which was a good job made possible by the low interest rates now current.

Q. That was instituted under Mr. Hockenbeamer's presidency?

A. Yes. Mr. Hockenbeamer did something and Mr. Black did considerable more, but I think, as far as the policies and methods of administration and operations are concerned, we have the same people we had before and doing much the same kind of work.

Q. Do you have any particular feeling about the

(Testimony of John D. McKee.)

desirability of North American's interference with Applicant's management or policies?

A. I think it would be very unfortunate if they either did or tried to.

Q. Why do you believe it would be unfortunate?

A. Well, this is a California company, with a large number of stockholders on the Pacific Coast, in which they take pride. I think the Board of Directors as a group of independent gentlemen would resent any such attempt and it would just make for friction and lack of harmony.

Q. Do you know whether or not North American represen- [643] tatives have *made* played any part in the determination of the Applicant's policy in regard to the Hetch Hetchy situation?

A. No, I would say not.

Q. I didn't get your answer.

A. You asked if the North American played any part in the policies followed by the Pacific Gas with respect to the Hetch Hetchy question and I would say "no".

Q. Other than the instance that you have already testified about, to what extent has North American participated in the dividend policy of the Applicant?

A. I never heard of any.

Q. Do you know whether or not their representatives were advised concerning the increase from 6 percent to 8 percent dividend rate in 1936?

(Testimony of John D. McKee.)

A. No. I think the dividend was reduced in 1933 because the earnings had shown a downward trend, and the Board was anxious about it; and in 1936, three years later, when there was an improvement in earnings, it was possible to restore the 8 percent, and that was done.

Q. Who recommended the increase at that time?

A. Let me see—Mr. Hockenbeamer was president then. He must have recommended that, or the Executive Committee.

Q. If a reduction or increase in the present dividend rate on the common stock were suggested, would you request North American's opinion on the advisability of such action [644] before it was taken by the Board? A. I would not.

Q. What matters, if any, do you feel that North American, as Applicant's largest stockholder, should be consulted in regard to before final action was taken by the Board? A. None.

Q. Who selected the syndicate manager of the underwriting syndicates formed in connection with the Applicant's financing prior to 1931?

A. What?

Q. Prior to 1931 who selected the manager of the underwriting syndicates formed in connection with the Applicant's financing?

A. In 1931—that must have been Mr. Hockenbeamer.

Q. I believe the evidence shows that the National City Company headed most all of the Ap-

(Testimony of John D. McKee.)

plicant's financing from about 1917 until it went out of business sometime in 1932 or 1933?

Mr. Phleger: May I suggest, in connection with that—you have asked that question two or three times—and I refer you to the exhibit which shows the underwritings and call your attention to the fact that between July 1919 and July 1920 Blyth, Witter & Co. headed four underwritings.

Miss Calkin: The question should be corrected to read from 1919 on. [645]

Mr. Phleger: Yes—1921 on.

A. Blyth, Witter & Co. I think the National City Company was quite helpful. When George Weeks was here——

By Miss Calkin:

Q. (interposing) That was prior to 1920, wasn't it? A. Yes.

Q. From 1921 on until the National City Company went out of the investment banking business headed all of the syndicates formed in connection with the Applicant's financing?

A. As far as I know financial negotiations were carried on between the brokers' house on the one hand, or the banking house on the one hand, and the president of the company on the other. It was that way during Mr. Creed's lifetime and also with Mr. Hockenbeamer, and with Mr. Black since he became president.

Q. So the Board didn't take a very active part

(Testimony of John D. McKee.)

in connection with the selection of the syndicate manager?

A. No; no part in the direct negotiations, or in suggesting any manager, but approved the program as recommended by the president, which would have the endorsement of the executive committee.

Q. And it had always been customary for the president of the company to handle such matters?

A. Of course, those negotiations are not things that can be done by a large group on each side. Conditions change, [646] market conditions change, and it takes some little finesse in handling such matters, because it may make or lose money for the company. The aim is to get the best price for the securities you possibly can.

Q. But those negotiations in an effort to get the highest price possible for the company were carried on by Mr. Hockenbeamer during his presidency?

A. Yes. First, by Mr. Drum, then by Mr. Creed and then by Mr. Hockenbeamer, and now by Mr. Black.

Q. The first financing done by the Applicant after the National City Company went out of the investment banking business was in March 1935 when the Applicant sold a $45,000,000 bond issue. Do you recall who headed the syndicate?

A. No. I could ascertain it if it is necessary.

Q. Are you acquainted with the banking firm of Lazard Freres & Co.? A. Yes.

(Testimony of John D. McKee.)

Q. And do you know how Lazard Freres & Co. got the management of the syndicate which purchased that issue? A. No, I do not.

Q. Do you know who selected Lazard Freres & Co. as syndicate manager? A. No.

Q. Did you have anything to do with the selection of either Lazard Freres & Co. as syndicate manager, or with the [647] selection of any of the members of that syndicate? A. No.

Q. Do you know whether Mr. Hockenbeamer—

A. (interposing) That was the time when we had to file the first long statement, and so forth—was it March 1935?

Q. Yes. I think that was the first issue that you registered under the Securities Act.

A. It is not pleasant to recollect, but I was in the hospital at that time. I didn't get out of Dante's Hospital until about April, I think. I remember I read over that document carefully when lying on my back in the hospital.

Q. No one ever approached you in an effort to get the leadership of that business? A. No.

Q. Do you know whether or not Mr. Hockenbeamer had any contacts with North American people regarding that piece of financing?

A. I do not.

Q. Do you know Mr. Blyth, Charlie Blyth?

A. Very well.

Q. How long have you known him?

A. Since 1915.

(Testimony of John D. McKee.)

Q. Did Mr. Blyth ever approach you in an effort to get you to use your influence on the Applicant's Board to get [648] the leadership of Applicant's business for his firm?

A. I think not. He had asked me to do a great many things from time to time—such as the Community Chest and upon various funds—and he might have, I think he would have assumed that if I was a director of the Pacific Gas and his name was being considered as a desirable underwriter, and he needed any endorsement, I suppose he would assume that I would favor him, other things being equal.

Q. If Mr. Hockenbeamer had asked you for your opinion as to who should head the Pacific Gas business during 1935 would you have recommended the Lazard Freres & Co.?

A. No, I wouldn't have initiated them, thought of them in this connection particularly. If he had asked me, do I know the firm and do I think it is high class, and can they do the job right, I would have said "I think they can." But I wouldn't have thought of them out of my own mind.

Q. But you wouldn't have selected them if it had been left up to you to make the initial selection?

A. No. I wouldn't have thought of them particularly because my financial business relationships or friendships were along other lines.

Q. Now, after Mr. Black became president the first issue of the Applicant was put out in March,

(Testimony of John D. McKee.)

1936, which was a $90,000,000 bond issue. Do you recall who headed the syndicate that purchased that issue? [649] A. I do not.

Q. The evidence, I believe, shows that Blyth & Co. headed that piece of business and has headed all of the public financing of Applicant since that date. Mr. McKee, what, if anything, do you know about how Blyth & Co. got the leadership of the Applicant's business in 1936?

A. I suppose Mr. Blyth went to see Mr. Black and made him an offer to buy the securities.

Q. But Mr. Blyth never approached you during that period and asked for your support in getting that business? A. No, he did not.

Q. And in your opinion is Mr. Black the person responsible for Blyth & Co.'s selection as syndicate manager of the business in 1936?

A. I would say that if Mr. Black reported to the Board that he wanted to make a financial deal, and would like to have it handled by Mr. Blyth and his associates, that the Board would approve it.

If Mr. Black had said, "Mr. Blyth wants the job but I am opposed to it, and he can't have it," we wouldn't force Mr. Blyth over his head.

So in that respect Mr. Black might be responsible for it.

Q. In your opinion did Mr. Blyth have more friends on Applicant's Board than any representa-

(Testimony of John D. McKee.)

tive of the firm of Lazard Freres & Co. had at that time? [650]

A. I think that is quite true.

Q. You had had a business, as well as a personal friendship with Mr. Blyth over a period of years?

A. Yes. Mr. Blyth and Mr. Witter were young men in the firm of Louis Sloss & Co., a brokerage banking firm, which got into difficulties in 1915. I was one of the committee that took hold of their affairs to straighten them out. These two men were left helpless, as it were, and they went in business with limited capital. I loaned Dean Witter $10,000 to start him, and Charlie Blyth got a little money, and from that they each became millionaires. It shows they are pretty good men. That was my experience with them.

Q. You never had any conversations with any representatives of the North American Company during 1936 concerning the financing of the Applicant? A. No.

Q. Do you know anything about how Dillon Read & Co. got a participation in the March 1936 $90,000,000 issue of bonds?

A. No. I presume that would be a matter of syndicate management to take them in. I don't know that the company controlled that. I don't know whether it did or not.

Q. You don't know whether they were invited in at the request of the North American Company?

A. No, I don't. [651]

(Testimony of John D. McKee.)

Q. Do you consider Blyth & Co. a California house as distinguished from a New York house?

A. I do.

Q. Is Blyth & Co. one of the largest underwriting houses on the Coast? A. It is.

Q. In your opinion was the selection of Blyth & Co. more agreeable to all members of the Board than the selection of Lazard Freres & Co.?

A. I think it should be said that all the Board wanted was some concern that could do the job right, that could pay the best price to the company for the securities and distribute them in the most effective way; that is, put them where they wouldn't be coming on the market too soon, put them away among real investors, I would say.

Now, from my acquaintance with Charlie Blyth, and because he is a Californian, my preference or my prejudice, I might say, would be that I would think he would be the best man for that.

I might be mistaken. Maybe Lazard Freres & Co. was a better house to do that job.

Q. Did you ever hear anyone express any criticism of the manner in which Lazard Freres & Co. had handled the Applicant's business?

A. I never did; no. I think the market-wise position of the securities now is testimony of the fact that they were well [652] placed.

Q. Do you know whether or not any representatives of Blyth & Company contacted any of the representatives of the North American Company in an effort to get Applicant's financing?

(Testimony of John D. McKee.)

A. I never heard of it.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You may be excused.

(Witness excused.)

Mr. Phleger: I will call Mr. Crocker.

Whereupon——

W. W. CROCKER

was produced as a witness for and on behalf of the Applicanct, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Crocker, will you give your name and address to the reporter for the record?

A. W. W. Crocker; 1 Montgomery Street.

Q. How long have you lived in California, Mr. Crocker?

A. 47 years and a couple of months.

Q. You were born in this state? A. Yes.

Q. When did your family first come to California? [653] A. In the spring of 1850.

Q. Has your father and grandfather lived here ever since? A. Yes.

Q. What is your occupation? A. Banking.

Q. And what position do you hold in banking?

(Testimony of W. W. Crocker.)

A. I am president of the Crocker First National Bank.

Q. What other corporations are you connected with as an officer or director?

A. Well, the Pacific Gas and Electric Company, the Matson Navigation Company, the Metropolitan Life Insurance Company, the Pacific Lighting Company, the Santa Cruz Cement Company, Gladding McBean & Co.——

Q. (interposing) Suppse I read a few?

A. Yes.

Q. Are you an officer of the Crocker Estate Company? A. Yes; president.

Q. President and director? A. Yes.

Q. Crocker-Huffman Land & Improvement Company? A. President and director.

Q. Crocker Investment Company?

A. President and director. [654]

Q. Pacific Improvement Company?

A. President and director.

Q. Provident Securities Company?

A. President and director.

Q. Bunker Hill and Sullivan Mining and Concentrating Company? A. Director.

Q. California Pacific Title and Trust Company?

A. Director.

Q. Del Monte Properties Company?

A. Director.

Q. Firemen's Fund Insurance Company?

A. Director.

(Testimony of W. W. Crocker.)

Q. Hobart Estate Company? A. Director.

Q. Do you personally and through your corporations in which you own stock, own substantial stockholdings in all of the corporations you have mentioned with the exception of the Metropolitan Life Insurance Company?

A. Do I what?

Q. Do you personally, or through corporations in which you are a stockholder, own substantial holdings in all of the corporations I have mentioned, with the exception of the Metropolitan Life Insurance Company? A. Yes. [655]

Q. With the exception of the Metropolitan Life Insurance Company all of those companies that you have mentioned might properly be described as western corporations, are they not?

A. They all are; yes.

Q. And is it fair to say that your interests are almost exclusively confined to the west and particularly to California?

A. I think that is an accurate statement.

Q. Mr. Crocker, I refer you to Exhibit 32, which has been introduced in evidence, and I will ask, by reference to it, you to state the number of shares of stock of Pacific Gas and Electric Company owned by you directly or by corporations in which you are affiliated?

A. I own personally 632 shares of common; the Provident Securities Company owns 10,720 preferred and 10,438 common; the Crocker Investment

(Testimony of W. W. Crocker.)

Company owns 7,737 common; and then the Crocker First National Bank has 61,383 preferred and 20,659 common—making a total of *11,569*.

Q. Now, you are a substantial stockholder, are you not, of the Provident Securities Company?

A. Yes.

Q. The shares which you have stated are owned by the Crocker First National Bank of San Francisco are owned by it in a representative capacity, are they not? [656] A. Fiduciary; yes.

Q. Of the shares of stock which you yourself own, and which are owned by corporations with which you are affiliated, been held for some considerable period in the Pacific Gas and Electric Company?

A. I think most of them for a great many years; yes.

Q. Have you ever been a seller of Pacific Gas and Electric stock? A. Never.

Q. You have been a buyer, have you not?

A. I have been consistently a buyer.

Q. By the way, Mr. Crocker, do any of these corporations own any shares in the North American Company?

A. Either the Provident Securities Company or the Crocker Investment Company owns stock.

Q. Do you know how many shares?

A. I would have to look that up.

Q. To refresh your recollection, is it 8,000?

A. 8,000; yes.

(Testimony of W. W. Crocker.)

Miss Calkin: Common of North American?

The Witness: Common.

By Mr. Phleger:

Q. That is spread between two corporations, is it not, that is, owned by two corporations? [657]

A. The Crocker Investment Company and the Provident Securities Company are so identical that I think it is spread between the two of them.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. The exact date—three years ago.

Q. October 6, 1937? A. Yes.

Q. It was shortly after your father's death, was it not? A. Yes.

Q. Do you know how long your father had been a director of Pacific Gas and Electric Company?

A. I don't recollect.

Q. For many years?

A. A great many years; yes.

Q. Did he frequently discuss his affairs with you in a general way? A. Yes.

Q. That is, during his lifetime? A. Yes.

Q. Do you know whether he was connected with any of the companies which subsequently became part of the Pacific Gas and Electric Company system? A. Yes. [658]

He practically started the Standard Gas & Electric Company, I think that is the name.

Mr. Bosley: Standard Electric Company of California.

(Testimony of W. W. Crocker.)

The Witness: Yes—in 1899, wasn't it?

Mr. Bosley: 1898 or 1899.

By Mr. Phleger:

Q. He and his associates were large holders of securities of that company, were they not?

A. They were.

Q. And when that company was consolidated with, or its properties were transferred to the Pacific Gas and Electric Company, he became in turn a large holder of securities of the Pacific Gas and Electric Company, did he not? A. Correct.

Q. How long have you known Mr. C. O. G. Miller? A. 20 years.

Q. How long have you known Mr. John McKee?

A. 20 years. I just said that because I came back from the war then.

Q. How long have you known Norman Livermore? A. Same number of years.

Q. How long have you known Mr. Chickering?

A. Same number of years.

Q. How long have you known Mr. Downing?

A. Same time. [659]

Q. How long have you known Mr. McIntosh?

A. Same number of years.

Q. How long have you known Silas Palmer?

A. The same.

Q. And Henry D. Nichols? A. The same.

Q. How long have you known Mr. Black?

A. I would say, when he was president of the Great Western Power. Would that be about 15

(Testimony of W. W. Crocker.)

years?

Q. He went East in 1927. So it would have to be before that date, would it not? A. Yes.

Q. And you have seen considerable of him in recent years? A. A great deal.

Q. Who was it that invited you to became a director of the Pacific Gas and Electric Company?

A. Jim Black.

Q. Did you know Mr. Edwin Gruhl during his lifetime? A. No.

Q. Did you know Mr. Dame during his lifetime?

A. No.

Q. Did you know Mr. Doolittle? A. No.

Q. Did you know Mr. Freeman? [660]

A. No.

Q. Do you know Mr. Fogarty? A. Yes.

Q. How long have you known Mr. Fogarty?

A. I would say three or four years. He came out to the Bohemian Grove about four years ago and that was the first time that I met him.

Q. And you met him only in the Grove?

A. Only in the Grove; yes.

Q. Have you ever discussed Pacific Gas and Electric Company affairs with him?

A. Never. [661]

Q. Have you ever been requested by Mr. Fogarty or anyone in the North American Company to vote in any particular way or to take any particular action as a director of the Pacific Gas and Electric Company? A. No.

(Testimony of W. W. Crocker.)

Q. Have you ever heard the name of the North American Company mentioned in any directors meeting of the Pacific Gas and Electric Company other than in connection with this proceeding?

A. Never heard it mentioned until it was announced that this proceeding was about to take place.

Q. As a director of the Pacific Gas and Electric Company have you always felt perfectly free to exercise your own judgment? A. Absolutely.

Q. Has anyone ever attempted to control your judgment as a director of the Pacific Gas and Electric Company? A. No.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence directly or indirectly by the North [662] American Company? A. No, never.

Q. If the North American Company attempted to control or influence directly or indirectly the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. Most certainly.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt?

(Testimony of W. W. Crocker.)

A. Undoubtedly, I think so, yes.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I do not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. No, I do not think so, no.

Q. Why? [663]

A. Because I think it's been proven over a period of years that California corporations are best run in California and that the stockholders would react to that logic, that point of view.

Q. You feel——

A. (continuing) Southern Pacific was bossed in New York for years and years and years; they just come to the conclusion that the only place to run the Southern Pacific is from San Francisco.

Q. Do you——

A. (continuing) ——And the same thing would apply logically to the stockholders.

Q. Mr. Crocker, do you think you would have any difficulty convincing the stockholders of the Pacific Gas and Electric Company in the event the

(Testimony of W. W. Crocker.)

North American Company were attempting to secure their proxies that the P. G & E., and the interests of its stockholders would be better served by California management than by North American management?

A. To me it would be a cinch, to persuade them to that effect.

Mr. Phleger: That is all.

The Examiner: Any cross examination, Miss Calkin?

Mr. Phleger: Do you want to take the recess now?

The Examiner: Oh, yes; perhaps we ought to have a recess for five or ten minutes. [664]

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Will you resume the stand, Mr. Crocker. You had completed your direct examination, I believe?

Mr. Phleger: Yes.

Cross Examination

By Miss Calkin:

Q. Mr. Crocker, why would you oppose any attempt on the part of the North American Company to dominate or control the policies of the Applicant?

A. Because it would not be to the best interests of the stockholders.

(Testimony of W. W. Crocker.)

Q. Do you personally or the companies which you are closely associated with have any substantial investment in any of the subsidiaries of the North American Company as distinguished from the North American Company itself? A. No.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No.

Q. As a director of the company what contacts, if any, do you have with the Vallejo Electric Light and Power Company? A. With the what?

Q. Vallejo Electric Light & Power Company; that is [665] a light and power company operating in which the Applicant has approximately 45 per cent ownership?

A. I don't know anything about it.

Q. Have you ever—do you recall the Board of the Applicant ever having discussed the operating problems of the Vallejo Light & Power Company?

A. I don't recollect that.

Q. Do you know who determines the policies of that company?

A. I do not know. That is the Vallejo——

Q. You had nothing to do with the negotiations which culminated in Applicant's acquisition of the Western Power Corporation's subsidiaries?

A. I do not.

Q. In other words, you played no part in Applicant's affairs until your directorship in 1937. Is that correct? A. Yes.

(Testimony of W. W. Crocker.)

Q. Did you ever hear—scratch that.

Did your father or anyone else ever tell you how Mr. Black was selected as president of the Applicant?

A. I—my best recollection, I remember my father telling him that C. O. G. Miller had discussed the matter with him and they hoped they would get him Black to be president; then the next thing was I heard that he was president. [666]

Q. It was your understanding that Mr. Miller originally suggested Mr. Black for the presidency of the Applicant?

A. No, I don't mean that. All I remember is that Mr. Miller and my father had a discussion and they told me the results of it.

Q. I believe you testified that you and Mr. Fogarty had never discussed any of the—any phases of the Applicant's business at any time?

A. I don't remember of discussing—I don't think any business—with Jim Fogarty.

Q. Have you ever talked to Mr. Fogarty in his office in New York? A. Never been there.

Q. The only times you have seen Mr. Fogarty was on occasions of his visits to California?

A. I think I have seen him maybe once or twice in New York casually at a club or something.

Q. Do you know who selects the proxies for annual stockholders meetings of the Applicant?

A. Who does what?

Q. Selects the proxies, the members of the Proxy

(Testimony of W. W. Crocker.)

Committee, for the annual stockholders meetings?

A. No; Executive Committee—I don't know.

Q. Do you know who makes up the slate of directors which are named in the proxy statements circulated to [667] stockholders in the Securities and—under the regulations of the Securities and Exchange Commission? A. Who does what?

Q. Prior to the annual stockholders meetings, under the present rules of the Securities and Exchange Commission, a proxy statement is made up which sets forth the names of the directors which the proxies will vote for, and my question is: Do you know who makes up the slate of directors which will be included in that proxy statement?

A. I think it is drawn up by the Executive Committee, and I think it is submitted to the directors for their approval.

Q. What directors, in your opinion, are most active in the affairs of the Applicant at the present time?

A. Mr. Wishon, Mr. Chickering and Mr. Livermore—the Executive Committee?—Mr. C. O. G. Miller, by all means.

Q. Have you ever heard Mr. Black advise the Board at a meeting attended by you as to recommendations which he received from the North American Company in regard to any of the Applicant's problems?

A. I had never heard the North American Com-

(Testimony of W. W. Crocker.)

pany's name mentioned in a directors meeting until this proceeding was brought up.

Q. You don't know to what extent, if any, Mr. Black communicates with the North American Company regarding the [668] Applicant's problems?

A. I wouldn't know.

Q. Has the Board ever disapproved a matter submitted to you by Mr. Black or recommended by him? A. Not that I know of.

Q. Has the relationship between the Board and Mr. Black during your directorship been at all times harmonious?

A. I would say very much so.

Q. Do you know anything about who selected Blyth & Company to head the Applicant's 1936 financing? A. No, I do not.

Q. And the Applicant has had no substantial bond issues since you have been a director of the company? A. No, they had been refinancing.

Q. I believe the record shows the only bonds issued by the Applicant since the time you became director were issued in February of 1938?

A. Yes.

Q. And consisted of a private sale of fifteen million dollars worth of bonds? A. Yes.

Q. Do you know who it was that determined that that issue would be sold privately rather than publicly? A. I think it was cheaper.

Q. Was that type of financing recommended by Mr. [669] Black?

(Testimony of W. W. Crocker.)

A. I don't remember exactly. There was a little discussion about it and we decided to do it that way because it was cheaper.

Q. Generally speaking does the president of the Applicant formulate his financial policy as distinguished from other officers of the company?

A. I would say that the president consults his Executive Committee and they reach a conclusion as to how to do their financing, then he voices the result to the full Board.

Miss Calkin: I think that is all.

The Examiner: Any redirect?

Redirect Examination

By Mr. Phleger:

Q. Mr. Crocker, you are a director of the Metropolitan Life Insurance Company, I believe.

A. Yes.

Q. Do you know whether it is a large holder of bonds of the Pacific Gas and Electric Company?

A. Yes, I think they are very large holders. I don't know the exact amount.

Q. Twenty million dollars worth?

A. You might as well mention any number; their portfolio runs in astronomical figures. [670]

Mr. Phleger: That is all.

The Examiner: You may be excused. Thank you, Mr. Crocker.

Mr. Phleger: Mr. Chickering.

Whereupon

ALLEN L. CHICKERING

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows?

Direct Examination

By Mr. Phleger:

Q. Mr. Chickering, will you give your name and residence address?

A. Allen L. Chickering, A-l-l-e-n; and residence, 11 Sierra Avenue, Piedmont.

Q. How long have you resided in California?

A. Since I was born, which is 63 years.

Q. When did your family first come to California? A. 1875.

Q. What is your profession?

A. I am an attorney at law.

Q. Have you always practiced in San Francisco? A. Yes sir.

Q. Mr. Chickering, I show you Applicant's Exhibit 32. Will you state, with your recollection refreshed by [671] examining it, the number of shares which you own personally in the Applicant, and then the number of shares which are held by other members of your family by associated interests?

A. Well, I have 1800 shares, a thousand common and 800 preferred; and then my family have the following: My son, as trustee for his daughter,

(Testimony of Allen L. Chickering.)

Caroline, 20 shares of preferred, and as trustee for another daughter, Joan, 16 shares of preferred; my son, Allen L. Chickering, Junior, has 220 shares of preferred and 200 shares of common; my wife, Alma S. Chickering has 1280 shares of preferred and 300 shares of common; my daughter-in-law, Carline R. Chickering, has 50 shares of common; my sister, Martha, 320 shares of preferred; my son, Sherman, 100 shares of preferred, and 40 shares of common; my sister-in-law, Theo Par Chickering, 280 shares of preferred and 16 shares of common, and as trustee 20 shares of preferred. My son, William H. Chickering, has 300 shares of preferred and 100 shares of common; my daughter, Mary C. Erdman, has 700 shares of preferred and 500 shares of common; and the Crocker First National Bank as trustee under my mother's will, in which trust I am the—one of the ultimate beneficiaries, has 225 shares of preferred and as trustee for my niece, in which I have no direct interest, 45 shares of preferred; or a total of 6,432 shares.

Q. Have you been a holder of stock of Pacific Gas [672] and Electric Company over a considerable period?

A. Yes sir, I have been gradually increasing my holdings. I bought 300 shares of common last year, but I have had stock for many years.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. In 1927.

(Testimony of Allen L. Chickering.)

Q. Who first talked with you about becoming a director?

A. Well, I am not sure, but I think it was Mr. Creed who was at that time the president of the P. G. & E.; but it might have been Mr. John O'Brien, who was president of Standard Gas and Electric Company. I had been vice-president and a director of the so-called Byllesby Companies which were sold to the P. G. & E. in 1927 and following the consolidation I became a director of the P. G. & E.

Q. Mr. Chickering, what corporations are you a director or officer of?

A. Well, I am a director—member of the Executive Committee of the Southern Pacific, Pacific Telephone & Telegraph Company; I am vice-president and director of the San Diego Gas and Electric; I am director of the Caterpillar Tractor Company and a number of smaller companies. I can give them if you would like to have them.

Q. I think that is all. [673]

A. (continuing) Riverside Cement Company; Smith Lithograph Company.

Q. Is it fair to state that all of these corporations have their principal interests in the west?

A. It is, except to a limited extent, the Caterpillar Tractor Company, where the manufacturing center of operations is Peoria, Illinois; but the corporate headquarters is here.

(Testimony of Allen L. Chickering.)

Q. And to the Easterners Illinois is west anyhow; isn't it? A. (pause)

Q. Have you any close connections with any eastern corporations or concerns? By that I mean concerns whose principal interest is along the Atlantic Seaboard? A. None whatever.

Q. How long have you known Mr. Foote?

A. You mean the secretary of the Pacific Gas and Electric Company?

Q. Yes, D. H. Foote.

A. Oh, at least 25 years.

Q. How long have you known Mr. C. O. G. Miller?

A. Well, almost since I was a boy, but I remember knowing him well as far back as 1910.

Q. How long have you known Mr. John D. McKee? [674] A. Oh, 35, 40 years.

Q. How long have you known Norman Livermore? A. Probably the same.

Q. How long have you known Mr. Downing?

A. I have only known him about 25 or 30 years.

Q. How long have you known Mr. Coghlan?

A. Well, I tried a case with him about 38 years ago. I think that is the first time I met him.

Q. How long have you known Mr. McIntosh?

A. Over 30 years.

Q. How long have you known Mr. Wishon?

A. 25 years, almost exactly.

Q. How long have you known Mr. Silas Palmer?

A. Well, I was quail shooting with him in 1897. I think I have known him about 50 years.

(Testimony of Allen L. Chickering.)

Q. How long have you known Mr. William W. Crocker? A. About 20 years.

Q. How long have you known Mr. Henry Nichols? A. 50 years.

Q. When did you first become a member of the Executive Committee of the Pacific Gas and Electric Company?

A. When John Drum left; for a guess, I would say it was 1929. I haven't looked it up.

Q. January 16, 1930 would that be about right?

A. I should say that would be; I knew it was 29 or [675] the early part of 30.

Q. Have you attended the meetings of the Board of Directors and of the Executive Committee with regularity?

A. Yes sir, I have very regularly, except when I have been out of town, as I have been occasionally.

Q. You take an active interest in the affairs of the corporation? A. Very much so.

Q. Are matters that come before the Board of Directors and before the Executive Committee of the company fully and freely discussed?

A. Yes sir, very thoroughly discussed and even if they have been discussed in the Executive meetings they are reported in the Board of Directors.

Q. In your opinion does any one director dominate the meetings of the Board or Executive Committee? A. No sir.

Q. At meetings of the Board or Executive Committee have you ever hesitated in freely expressing your views upon any subjects brought before it?

(Testimony of Allen L. Chickering.)

A. Decidedly not.

Q. Were you acquainted with Mr. Frank Dame during his lifetime? A. Met him once.

Q. Did you know Mr. Edwin Gruhl during his lifetime? [676]

A. I think I saw—met him twice. I think he was at a directors meeting out here once, and I think I saw him when I called on Mr. Black in New York once, may have seen him another time, but I don't remember.

Q. Are you acquainted with Mr. F. W. Doolittle?

A. Well, I have been introduced to him; I wouldn't know him if I saw him.

Q. Do you know Mr. James S. Fogarty?

A. Yes, I have seen him, I think, three times in my life.

Q. Do you know——

A. (continuing)—Once at a meeting here and twice in the North American office in New York.

Q. Do you know Mr. Herbert C. Freeman

A. Just met him.

Q. Now, have you ever at any time discussed with any of the gentlemen that I have just named the affairs of the Pacific Gas and Electric Company other than at a directors meeting that they may have attended.

A. Well, when I was in New York, while Mr. Black was connected with the North American Company I used to call on Mr. Black whenever I

(Testimony of Allen L. Chickering.)

had time because he and I were very warm friends socially and I may—when he introduced me to these other gentlemen I may have told him—told them what was going on in the P.G.& E., but I don't remember. In other [677] words, they may have asked me what was doing out here, and I may have told them, but I don't remember whether I did or not.

Q. Did any of those gentlemen or any one every ask you to take any particular action as a director of the Pacific Gas and Electric Company on behalf of the North American Company?

A. They never did.

Q. Were you acquainted with Mr. Guy Earl——

A. Yes.

Q. (continuing) ——in his lifetime?

Do you remember that he was a director and member of the Executive Committee of the Applicant from 1930 until his death in June 1935?

A. I do.

Q. Did you ever discuss the business and affairs of the Applicant with Mr. Earl other than in a directors meeting?

A. Oh, we used to take the same boat across the bay after the meetings and it is highly likely that we may have chatted about what may have taken place at the meetings on our way down to the boat, but I don't recall except one thing and that was I debated the reference to the Federal Court in connection with the gas rate decision of the Railroad

(Testimony of Allen L. Chickering.)

Commission, I being opposed to going to court, [678] and, I believe, as I recall it, he was in favor of it. That is the only thing I remember.

Q. Did Mr. Earl ever request you to vote in any particular way or to take any particular action as a director of the company? A. No sir.

Q. Was Mr. Earl a particularly active director of the Pacific Gas and Electric Company?

A. He was very active in taking notes, and that's about all. He didn't talk up very much, but he took lots of notes.

Q. You recall the purchase by the Pacific Gas and Electric Company in 1930 of the stock of the Great Western Power Company of California and the San Joaquin Light and Power Company, then owned or controlled by the North American Company?

A. I do; but wasn't it the Western Power Corporation?

Q. Yes. I used the expression "then owned or controlled". A. Oh, yes.

Q. (continuing)—by the North American Company? A. Yes.

Q. The stock was actually owned by the Great Western?

A. Yes, I recall it very distinctly. [679]

Q. Will you state what you know of that transaction, how it came about, and how it was consummated?

A. The first that we heard of it, and when I say

(Testimony of Allen L. Chickering.)

"we" I mean the Executive Committee of the Pacific Gas. Well, when Mr. Hockenbeamer reported that Mr. Black was in town and that discussions relative to a purchase of the Great Western and San Joaquin were underway and that while nothing had been arrived at, Mr. Black he thought would take two million shares of P.G.& E., and Mr. Hockenbeamer seemed to me to be in favor of the purchase, and I asked him what he—how he arrived at it, and he said that he had taken the earnings of the companies which we were purchasing which were earned from the equity in the stock, and was offsetting them against the dividends on the two million shares which at that time were $2 a share, or would have been four million dollars annually, and I objected strenuously because I said and asked for the figures which I then got and I worked on them at great length, and my first deduction was to deduct the surplus that the P.G.—the same amount from the earnings of the Western Power group as the surplus above the dividends on the stock of the P.G.& E. amounted to.

While I haven't got the figures in mind, if the P.G.& E. earned, we will say, 50 cents above the $2 dividend, [680] I thought that that proportion ought to be deducted from the Western Power price, and having made that deduction we got the amount that the Western Power group ought to get for their stock down to a million six hundred thousand shares of two million shares.

(Testimony of Allen L. Chickering.)

Then I talked it over with Mr. Frank Anderson who was at that time a member of the Executive Committee, and we figured that the Western Power group ought to get a little something above their million six because of the fact that they were giving up their position in the utility world out here, and we added on a hundred thousand shares which made a million seven hundred thousand shares, and when we got in the meeting Mr. Miller said that he thought that we weren't adding enough for them giving up their position, that we ought to add another hundred thousand shares, making a million eight hundred thousand shares, and Mr. Anderson and I said we thought that Mr. Miller was cracked, which I do, and Mr. Hockenbeamer was quite disappointed because he said we would lose the deal and Mr. Black would go East; and I said that that made no difference to us, that there was excellent telephone and rail service between here and New York and he could come back, which he did, and took the million eight.

Q. Now, during these negotiations Mr. Hockenbeamer was constantly in touch with the members of the Executive [681] Committee, was he not?

A. Oh, we had meeting after meeting, we discussed it with the utmost detail and we went into the—I went into the thing for hours at home. I had to do it in order to come to the conclusion that I have just mentioned.

Q. And the other members of the Executive Committee were also active, were they not?

(Testimony of Allen L. Chickering.)

A. Very active, but the committee was split on that point. Mr. Elsey and Mr. Hockenbeamer were anxious to acquire the property that we brought; Mr. Anderson, Mr. Miller and myself did not want to acquire it at more than we thought was a proper price.

Q. Now, during those discussions and before the transaction was authorized by the Board of Directors, were there any discussions with respect to the position of the North American Company as a stockholder after the transaction was consummated?

A. Yes sir. The first thing that I objected to was the North American domination. I said I was afraid of it and Mr. Hockenbeamer said that he had been assured that there would be no domination, that they simply have an investment position; they wanted to have three members on the Board of Directors but that they would not exercise any domination or attempt to increase their holdings.

[682]

Now, I only know that from Mr. Hockenbeamer. I didn't talk with Mr. Black myself.

Q. That statement was made by Mr. Hockenbeamer? A. Yes sir.

Q. Before the transaction was consummated?

A. To the Executive Committee?

Q. Yes.

A. It was one of the first points the committee brought up, the objection of that sort.

(Testimony of Allen L. Chickering.)

Q. Now, following that transaction, so far as you know, has there ever been any attempt on the part of the North American Company to either control or influence the management or policies of the Pacific Gas and Electric Company?

A. None whatever.

Q. How long have you known Mr. Black?

A. At least 20 years.

Q. You knew Mr. Black for some time, did you, before he went East after the North American Company had——

A. (interposing) Oh, I knew him very well before that. That is why I called on him in New York just because I knew him well and liked him.

Q. You had known him by—or rather, you had known his work as an executive of the Great Western Power, had you not? [683]

A. In a general way; but I can think of one thing that will recall that I knew him pretty well as far back as 1920 or 21. They were nominating directors for the San Francisco Commercial Club and they asked to have the nomination in the open meeting of the club, in addition to being reported and put on the Board by a Nominating Committee, and I was asked to nominate Mr. Black, the idea being this, the nominee would stand up so the club would see who he was. I had nominated him then. I was selected because of my close acquaintance with him.

(Testimony of Allen L. Chickering.)

Q. Had you known any member of Mr. Black's family before he went East?

A. Well, I knew his—I didn't know his wife, but I knew her family from childhood, the MacIllraths.

Q. They were old time residents?

A. Yes sir, of Oakland.

Q. Of Oakland, were they not? A. Yes.

Q. Now, during the period after the North American transaction in 1930 and up until the time of Mr. Black's election to the presidency of the company in November, 1935, how often had you seen him?

A. Whenever I could. I used to go to New York quite often, say for example, twice a year, and if I had time, which I frequently did not, I always used to call on him. [684] Once I met him in a little restaurant in New York and chatted with him there, and when he came to San Francisco I believe that he always used to call on me. In fact, I gave a large lunch for him at the Pacific Union Club in September, 1935, when he was here on a visit. But I had no relations of any kind with him at any time until he became president of the Pacific Gas and Electric Company, other than socially.

Q. During these meetings that you have referred to did you discuss Pacific Gas and Electric's affairs as such?

A. I think that he always asked me how the company was doing and how the various people in

(Testimony of Allen L. Chickering.)

it that he knew were as to health, and I probably told him; but I haven't any specific recollection of it.

Q. Did he ever, during that period, request you to take any particular action on any Pacific Gas and Electric matter?

A. Not in the least degree.

Q. Do you recall Mr. Hockenbeamer's death in November, 1935? A. Very well.

Q. Was his death unexpected?

A. Yes, he was—he went to the hospital for observation a day or two before and Mr. Downing telephoned to me, I think, on the day that he died, that he was sinking; [685] and then later telephoned to me that he died, which was very unexpected to me.

Q. State, Mr. Chickering, what you know of the selection of Mr. Black as president of the company to succeed Mr. Hockenbeamer?

A. Well, we were in a rather weak condition at the time owing to the fact that there were only three members of the Executive Committee. Mr. Earl had died some little time before—I don't know when—but, for example, I would say about July of 1935, and Frank Anderson had died in September of 1935, so that the only members of the Executive Committee living were Mr. Miller, Mr. Elsey, and myself.

And one of these gentlemen asked me to come to the American Trust Company to Mr. Elsey's office

(Testimony of Allen L. Chickering.)

so that we might discuss a successor, and we spent a long time in which we went into every qualification that we could think of, and the first meeting we leaned toward Mr. Black, and we had another meeting. In the meantime I was to look up some things about Mr. Black, which I did in the meantime. And at the second meeting we were united a hundred per cent in favor of Mr. Black.

I don't know who brought Mr. Black's name up, but I was in favor of him from the beginning. And my reasons were these:

In the first place he was a comparatively young man, [686] he'd had an excellent—he was a graduate of the University of California, therefore a California man; he had married a California wife. He'd had an excellent training with the Great Western Power Company, which was a part of our organization. He was a director of the company already, which he was, and he had an additional qualification which I thought was exceedingly important and which turned the scale with me, and that was that he had had a great deal to do with financing in the North American Company, as I happened to know, because when I saw him in New York in June of 1935 I was there on a big piece of financing and it was an early piece of financing in the Securities and Exchange Commission, not the first, but an early one; and Mr. Black questioned me. And this was the San Diego Gas and Electric, by the way.

(Testimony of Allen L. Chickering.)

Mr. Black questioned me in great detail about the prices and how we arrived at them, and the number of years that the bonds had to run, and our experiences with the Securities and Exchange Commission and registration statements and so on, and he showed—he told me he was asking these questions in order to familiarize himself on account of some financing that some company he was interested in——I don't know what it was, what it was planning to do, and in the course of that conversation I became convinced that he was better equipped along financing lines, which I thought [687] were very important to the Pacific Gas and Electric than anybody in our organization and that qualification turned the scale in his favor with me, so I supported him.

I wasn't so familiar with his operations, but I inquired between the two meetings and I got nothing but a favorable result, so when I came back for the second meeting I reported to that effect.

We, thereupon, were unanimous in favor of Mr. Black, so we deputed Mr. Miller to ring up Mr. Fogarty of the North American Company to get his permission to approach Mr. Black. We figured that was the proper thing to do on account of the fact Mr. Black was working for the North American Company then. So Mr. Miller phoned Mr. Fogarty and reported to us that Mr. Fogarty was opposing—didn't want to let him go, but that he would think the matter over and call him up later on.

(Testimony of Allen L. Chickering.)

And Mr. Miller then later reported to Mr. Elsey and myself that he had heard from Mr. Fogarty and Mr. Fogarty said although he didn't want to see Mr. Black go he didn't feel that he had any right to stand in his way and therefore we might speak to him.

Now, this was all reported to me by Mr. Miller. I don't know anything except that.

So that we asked Mr. Miller to call up Mr. Black, which he did, and then he reported to us that Mr. Black [688] seemed favorable and would come out to San Francisco to talk it over, and I said to Mr. Miller: "Did you say anything in the conversation about Mr. Black severing all of his connection with the North American Company?"

And Mr. Miller said "No; I didn't think it was necessary. Of course he would do that."

And I said, "Well, that is not sufficient for me. I must insist that we telephone Mr. Fogarty and ask—or Mr. Black and ask him, tell him he must sever all connections with the North American Company."

And Mr. Miller said "Very well, I will do it."

But he evidently was irritated at me for suggesting it. And he did phone Mr. Black, as he told me, and he told me Mr. Black said he would, of course, sever any connection with the North American Company, and that satisfied me because I had Mr. Miller's word for it.

Q. And did the group of yourself, Mr. Elsey

(Testimony of Allen L. Chickering.)

and Mr. Miller then discuss the matter with other directors of the company?

A. Oh, yes. I think Mr.—we had Mr. Miller do that. Mr. Crocker testified about his father; I think Mr. Miller did most of that. We let him be our spokesman in order to avoid confusion.

Q. And at the next meeting of the Board of Directors Mr. Black was elected? [689]

A. Right.

Q. By the way, Mr. Chickering, have you ever owned any stock or securities of the North American Company? A. Never seen any of it.

Q. Do you know anybody who does own any stock in the North American Company?

A. Not to know that they do.

Q. You have mentioned a registration statement by Pacific Gas and Electric Company. Do you recall the filing of that registration statement?

A. The first one?

Q. Yes, the 1936 one. A. Yes.

Q. Or the 1935 one? A. 1935, yes, I do.

Q. What makes you remember?

A. Because I was opposed to it.

Q. Was that one of the first registration statements that were filed—— A. Yes.

Q. (continuing) ——by any public utility under the——

A. That is right.

Q. (continuing) ——Securities Act.

A. I would be glad to tell you, if you want, why I was opposed to it. [690]

(Testimony of Allen L. Chickering.)

The Examiner: Is this political or——

(Laughter)

By Mr. Phleger:

Q. Mr. Chckering, have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company were subject to a controlling influence directly or indirectly by the North American Company? A. No

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. Most certainly I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempt? A. I do.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so? A. I do not. [691]

Q. If the North American were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholders meeting, and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Com-

(Testimony of Allen L. Chickering.)

pany, do you think that the North American Company would be successful in its attempt?

A. I do not.

Q. What are the reasons for your last answer?

A. Well, in the first place, the Pacific Gas and Electric Company is, and always has been, a California Company; and not only I, but I think the public here generally are pleased with that situation.

They don't want any outsider dominating it.

In the next place I don't think that the holding company domination is at all popular; and *the* in the next place, the North American Company is practically unknown out here, either for good or bad.

The only time I ever heard it spoken of was when someone tried to bring it up in connection with some Fresno rate case quite a while ago.

And furthermore, I think the California public are very well satisfied with the management of the P. G. & E. being in California, and in the hands of California men. I don't think they want any change, or any outside domination. There are lots of other reasons, but I guess that is a—— [692]

Mr. Phleger: I think that is all, Mr. Chickering.

The Examiner: You want to cross examine?

Miss Calkin: It is 4:15, I thought I heard Mr. Chickering say he wanted to be gack in his office at 5:00 o'clock.

I know it will take me longer than that to cross

(Testimony of Allen L. Chickering.)

examine Mr. Chickering, so it would be necessary for him to return in the morning any how.

Mr. Phleger: As a matter of your convenience, if this is a convenient time for you, Mr. Chickering, I will——

The Witness: I have an appointment with the doctor at 5:00 in Oakland.

The Examiner: Well, then, we——

The Witness: (continuing) ——And I have a Caterpillar meeting at 9:00 o'clock tomorrow morning. I could get here at 10:30. Would that be all right? I can cut the Caterpillar meeting, if necessary, but I would rather not.

The Examiner: Unless there is some objection on the part of counsel we could start here in the morning with some other witness, then take your cross examination when it is convenient for you to be here, unless there is some other objection.

Mr. Phleger: I will arrange for another witness at 10:00 o'clock, then you be here at 10:30.

The Witness: Yes, it might be 10:35, but I will be [693] here as soon as I can.

Mr. Phleger: Yes.

The Examiner: All right; in that event the hearing will now be concluded until 10:00 o'clock tomorrow morning.

(Whereupon at 4:20 p. m. the hearing in the above entitled matter was adjourned to Tuesday, November 19, 1940, at 10:00 a. m. [694]

PROCEEDINGS

The Examiner: Are we ready to start now? I apologize to you all for being late.

Miss Calkin: We didn't even know you were late.

The Examiner: But it afforded you to have a little discussion off the record.

Mr. Phleger: Mr. Beckett.

Whereupon——

E. J. BECKETT

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Beckett, will you give your name and address for the record?

A. My name is E. J. Beckett; 245 Market Street, San Francisco.

Q. Mr. Beckett, are you connected with the Applicant? A. Yes sir.

Q. What position do you hold?

A. Assistant treasurer.

Q. What are the duties of that position?

A. My duties have included the preparation of [696] statistical and financial analyses relating to

(Testimony of E. J. Beckett.)

the possible acquisition of other utilities formerly operated in this territory; applications for listing the companies securities on various stock exchanges; studies connected with bond refunding and stock refunding operations; I have also been assistant in the preparation of communications to stockholders, including annual and interim reports, and prepared or assisted in the preparation of advertisements during stock selling campaigns and other financial advertising.

Q. How long have you been connected with the Pacific Gas and Electric Company?

A. Continuously since 1915.

Q. And what position have you held successively during that time?

A. I originally went to work for Mr. A. F. Hockenbeamer who was their vice-president and treasurer and later became president of the company; went to work for him on August 1, 1915, as a secretary and assistant, and was in his employ continuously until his death; and I have since served in a similar capacity with Mr. Black.

Q. When you say that you were in Mr. Hockenbeamer's employ, you mean you were under his personal direction?

A. Under his personal direction.

Q. Do you at the request of Mr. Black forward certain statistical information to Mr. Fogarty?

[697]

(Testimony of E. J. Beckett.)

A. I forward it to Mr. Freeman.

Q. Mr. Freeman? A. Yes, sir.

Q. Now, I show you Applicant's Exhibit 33 and will you go through it and state the various documents which you forward?

A. There are on this statement a few documents forwarded from our office; No. 9, consolidated income statement, No. 10—in comparative form—may I start again?—consolidated income statements in comparative form showing the month, year to date and 12 months to date, with supplementary statements showing revenue and the expenses by major departments, accounting classification and geographical division.

No. 10, consolidated balance sheets in comparative form with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

No. 12, copy of report submitted to the Edison Electric Institute showing sources and disposition of electric energy and classifications of customers.

No. 13, copies of Gas and Electric rate schedules, revised from time to time, by the filing of new schedules with the California Railroad Commission.

No. 14, copies of report for insurance companies, [698] prepared annually and mailed to the larger insurance companies and many of the institutional investors.

Q. Are those all of the documents and reports which you forward to Mr. Freeman?

(Testimony of E. J. Beckett.)

A. Yes, sir.

Q. Now, the items which you have denoted as Items 9 and 10, consolidated income statements in comparative form and consolidated balance sheets in comparative form, are they regularly prepared in the president's office and submitted by him to the Executive Committee or Board of Directors?

A. They are prepared in the accounting department and forwarded to the president, and he submits them regularly to the Executive Committee or the Board of Directors.

Q. And do you forward them to Mr. Freeman after the meetings at which they are submitted by Mr. Black? A. Yes, sir.

Q. Now, with respect to the copy of report submitted to the Edison Electric Institute, is that a form which is sent out by the Edison Electric Institute to all of its members? A. Yes.

Q. And is it true, then, after you have forwarded it to the Edison Electric Institute, do you send a copy to the North American Company?

A. That is right. [699]

Q. Is that report also submitted to the Board of Directors? A. No.

Q. Now, with respect to the copies of the gas and electric rate schedules which you stated you have forwarded from time to time. Those schedules are forwarded, are they not, after they have been sent in to the Railroad Commission?

A. After filing with the Railroad Commission, yes.

(Testimony of E. J. Beckett.)

Q. In other words, it represents a completed transaction? A. Yes.

Q. With respect to rates?

A. That is right.

Q. And you would have no communication with Mr. Freeman relative to rates prior to the filing of a rate schedule by the Pacific Gas and Electric Company, would you? A. No, I do not.

Q. Now, with respect to Item 14, the report for insurance companies, is that report made up on a form which has been prepared by the insurance companies themselves?

A. Yes, the original form was prepared by a committee representing the insurance companies and members of the electrical industry for convenience of the insurance companies and having a report which was standard for all companies. [700]

Q. About how many of these reports do you send out, copies of that report, do you send out?

A. There are around 400 copies of that report sent out from our office. They are forwarded to practically all insurance companies in the country having a gross income in excess of one million dollars, about three hundred of those and 70 or 75 additional copies are forwarded to anyone who is sufficiently interested to request them.

Q. So that one copy of the report which is sent out to some 400 investors is furnished regularly to Mr. Freeman? A. That is right.

Q. Is that correct? A. Yes sir.

(Testimony of E. J. Beckett.)

Q. Mr. Beckett, does the North American Company write to you periodically requesting certain information respecting Pacific Gas and Electric Company to be included in its annual report; that is, the report of North American Company?

A. Yes, not only the annual report but in the quarterly report, the president's quarterly report, to North American, that included some statistics showing the output of electricity and of gas and the number of customers served by electric and gas service for the year ended on the particular quarterly date, they write to us quarterly for that information which [701] we furnish them for their report.

Q. Is that information which you furnish them any different than is furnished to the Board of Directors or Executive Committee or to the Railroad Commission?

A. Possibly to the extent that it covers a twelve months period. As I recall it our reports which are filed normally show the month and year to date, but do not show a full twelve months period.

Q. But the information itself is similar to that which is furnished to the Board of Directors and the Executive Committee and the Railroad Commission? A. That is correct.

Q. Now, in—strike that out.

Have you been connected with the sale of securities, particularly stock, by the company?

(Testimony of E. J. Beckett.)

A. I have not worked directly in the stock sales department, but I have been generally familiar for a good many years with the method used by the company in selling stocks and the results of their sales campaigns.

Q. Will you state what took place in 1914 with respect to the sale by Applicant of a new class of preferred stock, stating the condition which made that desirable, how it was done, and what the results were?

A. Going back a little way from 1914, at the close of [702] 1913 the company found itself in a position where apparently the proportion of outstanding funded debt to the total capitalization was top-heavy.

December 31, 1913 there were outstanding in the hands of the public 80,485,800 par value of bonds and notes, $10,000,000 of par value of 6 percent preferred stock and $32,109,300 par value of common stock.

The surplus accounts amounted to approximately $2,197,000; the funded debt constituted 64.1 per cent of the total capitalization and surplus; preferred stock 8 per cent and common stock 25.6 per cent, and surplus 2.3 per cent.

The capital structure was obviously not well balanced and it was exceedingly difficult, particularly in view of the conditions of the securities market at that time for the company to obtain the additional capital funds needed to keep abreast of the growing needs of its business.

(Testimony of E. J. Beckett.)

The company's general refunding mortgage bonds, due January 1, 1942, the only medium of bond financing then available was selling in the low 80's.

Under the articles of incorporation then in effect the authorized stock capitalizations consisted of one million dollars of 6 per cent preferred stock, all of which was then outstanding; and 150 million dollars of common stock.

No dividends had been paid on the common stocks since April, 1913, and this stock could not be used as a medium [703] to raise the new capital. It was found necessary, under the circumstances, to resort to expansive short term borrowing.

With a view to remedying this unsatisfactory situation by getting more equity money and effecting a permanent improvement in its financial structure, the company, on June 3, 1914, addressed to its stockholders a circular letter outlining a proposed plan for amending its articles to effect a reclassification of share capital by reducing the authorized common stock to one hundred million dollars and authorizing a new issue of fifty million dollars of 6 per cent first preferred stock in addition to the then outstanding issue of ten million dollars of preferred stock, subsequently known as the original preferred.

The Examiner: At what rate of interest?

The Witness: The new stock bore a 6 per cent interest rate the same as the original stock.

(Testimony of E. J. Beckett.)

The Examiner: Originally it was what, 5-1/2 or 6?

The Witness: Originally it was also 6.

The Examiner: All right.

The Witness: The new first preferred stock not only assumed precedence over the original preferred with respect to assets and dividends, but it was also made non-assessable by the company.

The original preferred was assessable, and as a matter [704] of fact an assessment of $10 per share had been levied on this stock in 1907.

The new preferred stock was, therefore, definitely more attractive from an investment viewpoint.

As an inducement to the original preferred stockholders to consent to this plan of recapitalization, it was provided that they would have the right subsequent to June 30th, 1916, to exchange their holdings for the new stock at the rate of 10 shares of the original preferred for 10-1/4 shares of the new first preferred stock, and all of the original preferred was afterwards exchanged for the first preferred stock on this basis.

By Mr. Phleger:

Q. Now, what were the corporate proceedings and proceedings before the Railroad Commission which then took place?

A. A meeting of the stockholders was held and at that meeting, on June 15, 1914, stockholders approved the proposed plan and the company there-

(Testimony of E. J. Beckett.)

after made application to the California Railroad Commission for authority to issue its first preferred stock of the par value of 12 million five hundred thousand dollars, and also for authority on and after July 1, 1916, to issue additional preferred stock in exchange for the original preferred under the plan I have outlined. [705]

Q. In the authorization what did the Railroad Commission say with reference to this plan?

A. Commissioner Phelan wrote the opinion of the Commission, and in his decision, Railroad Commission decision No. 1632, the Commissioner stated:

"Applicant's plan to sell its new preferred stock appeals to me as purely sound and commendable. It will enable Applicant to refund the outstanding gold note issue of seven million dollars, put additional security behind Applicant's bonds, help take care of the margin between the 100 per cent of construction expenditures and the 90 per cent face value of bonds which Applicant can issue against construction expenditures and probably result in an increase in the price to be secured for its general and refunding bonds hereafter issued."

Q. What steps were then taken by the company to sell the preferred stock which had thus been authorized?

A. On July 1, 1914, the company circularized its stockholders inviting their subscription at 6 per cent, the first preferred stock, at the price of $82.50 per share to yield about 7-1/4 per cent on that same

(Testimony of E. J. Beckett.)

date, the subscription privilege subject to the prior rights of stockholders, but otherwise on the same general terms was extended to the [706] officers and employees of the company; and on July 24, 1914 the offer was also extended to all of the company's customers.

Q. And what was the method of sale and the result of the solicitation to purchasers?

A. The method of sale was, as I have stated originally, the circularization of all customers. At that time I think that approximately 250,000 circulars were mailed to customers.

Prior to the actual mailing of the circulars the districts and divisions and departments of the company were advised of the company's plan through meetings of employees and a small commission was paid to employees to encourage their solicitation of subscriptions of the stock among customers and others.

A commission, which I think was $1 per share on a $100 of par value, was also paid to certain other persons particularly in towns where the company had no district offices.

There was also some newspaper advertising carried on at that time. And as a result of this first campaign by the close of 1914 the company had sold approximately $8,800,000 par value of its 6 per cent preferred stock to more than 3,700 individual purchasers.

Q. Was the sale of that stock interfered with by [707] the opening of the World War?

(Testimony of E. J. Beckett.)

A. No, apparently not. As a matter of fact, while the stock markets of the country were demoralized to a certain extent, that it was found necessary to close the stock exchanges for a period of several months in 1914, these events did not seem to have any particular effect on the company's sale of stock.

A great number of the subscriptions apparently came from people who were not accustomed with stock market quotations and had no previous experience in making investments; a number of customers came from persons, comparatively small investors, who subscribed on the installment plan.

Q. So far as you know, was this the first attempt by public utility to undertake a comprehensive and systematic campaign to sell its stock to local owners? A. Yes sir.

Q. And who was responsible for the inauguration of the plan?

A. Mr. A. F. Hockenbeamer, at that time treasurer of the company.

Q. Did this experiment by the company in selling its stock to local owners through its own organization attract attention in the public utility field and in financial centers? [708]

A. Yes, it attracted a good deal of attention. It received a great deal of newspaper comment, not only locally but in financial centers of the East, and national financial magazines; I recall that one magazine conducted a competition with cash prizes for

(Testimony of E. J. Beckett.)

the best articles on customer ownership financing for some years, relating the methods employed and things of that type. And the company received a—received very numerous inquiries from other utilities asking the methods employed and the results attained and the costs, things of that type; and a great number of other companies subsequently adopted this plan.

Q. Did the National Electric Light Association form a corporation to conduct an educational campaign among its members as to the best methods to be followed in a similar campaign?

A. Yes; that method was formed, as I recall it—I haven't refreshed my memory—but I think that after four or five years after the plan had been started by the Pacific Gas and Electric Company, the idea had assumed such proportions that it was of national interest to the industry, and I think that committee was formed about 1918 or 19 and functioned for at least five or six years, possibly longer.

Q. Can you recall one of the statements made by a financial writer with respect to this program?

A. Yes. This statement was made by a financial writer [709] during the month of July, as I recall it, almost immediately after the first results of the campaign became known in 1914:

"A new trail through the jungle of finance has been blazed by the Pacific Gas and Electric Company of California. Financiers all over the United

(Testimony of E. J. Beckett.)

States have been following the pathfinders with the keenest interest. Other corporations with the stuff to stand the test are likely to follow the Pacific Coast leaders; at a time when the markets of the world were upset and new financing plans seemed almost suicidal, the Pacific Gas and Electric Company came boldly forward and offered to take their customers into partnership. Such an offer, particularly at such a time, had never been made before in the history of American corporations."

Q. Now, will you tell us of the subsequent experience of the company with respect to selling its securities directly to customers and residents of its territory; that is, I mean, subsequent to the first campaign in 1914.

The Examiner: This 1914 campaign of which you speak, was that before you joined the company or after?

The Witness: That was before I joined the company.

The Examiner: I see.

The Witness: I became very familiar with it because as Mr. Hockenbeamer's secretary I took dictation from him on a very large number of letters in response to inquiries [710] and I became quite familiar, under the circumstances, from the constant repetition—we received so many inquiries on the subject that Mr. Hockenbeamer said on the subject, "We would have to get out a pamphlet on the procedure followed and the results so we could

(Testimony of E. J. Beckett.)

mail it around in response to the number of inquiries we received."

By Mr. Phleger:

Q. These matters that you have just testified to are matters with which you became familiar in your position with the company, and the facts and figures were taken either from its records or were told you by Mr. Hockenbeamer. Is that right?

A. That is correct, yes, and subsequent to August, 1915, they are a matter of personal knowledge.

Q. Yes. Now, with respect to the sale of these securities to customers and residents of the company's territory, what was the experience of the company after the first sale in 1914?

A. The company continued that policy for many years, as its need for capital dictated. Stock was sold, as I recall it, almost continuously. Or strike that out. Not almost continuously, but campaigns were conducted in almost every year from 1914 until about 1932, except during the war period, 1916, 17 and possibly 18, when there was very little need for new capital. [711]

Preferred stock was not sold in each of those years, but I am correct in stating preferred stock was sold in many years prior to 1924 at least.

The last campaign of that type was in the early spring of 1932 when the company made an offering of five million dollars of its first preferred 6

(Testimony of E. J. Beckett.)

per cent stock at par, and sold that amount within a period of less than 2 months.

They received approximately 7,000 subscriptions.

During the entire period from 1914 to 1932 approximately $76,000,000 par value of first preferred stock, either 6 per cent or 5½ per cent, was sold direct by the company without any underwriting at a selling cost of approximately 63.4 per cent of $100 par value.

Q. Do you know how many individual sales that represented and what the average purchase was?

A. Altogether 68,668 individual sales were made, the average amount per purchaser being about $1100.

Q. Now, is it a fact that since 1914 the company has not sold any of its stock through the medium of underwriting with one exception?

A. Yes, that is correct.

Q. And what was that exception?

A. In 1919 the company sold five million dollars par value of its 6 per cent stock to Blyth Witter & Company who carried on a campaign somewhat similar to that which [712] had been carried on previously by the company.

Q. That was the only occasion, was it not, that the company sold its stock through underwriters in the 16 of the 26 years? A. 26, yes.

Q. Yes. Now, did the company sell common stock as well as preferred stock under the same plan?

(Testimony of E. J. Beckett.)

A. In 1924 the company made an offering of five million dollars par value of common stock to its stockholders.

The circulars, as I recall it, were mailed on July 9th, and stockholders subscriptions were invited, the company reserving the right to terminate the offer on August 1 of 1924.

Subscriptions were received to approximately $7,700,000 par value of stock, so the company applied to the Railroad Commission for authority to issue an additional five million dollars par value stock for the purpose of filling the subscriptions of the stockholders.

Later on, either in the fall of 1924 or early in 1925, additional common stock was sold over the counter in much the same manner that the preferred had been sold.

During those two years twelve million—and including the stock which was offered to stockholders which I have already mentioned, $12,500,000 par value common stock was sold at prices ranging from $93 to $109 per share, and [713] almost 10,000 subscriptions were received for this stock.

Since that time more than $53,000,000 of common stock has been sold direct by the company at par or better.

Q. Now, with the exception of the stocks, common stock sold by offering rights to subscribe to common stockholders, have all of the shares of stock that you have mentioned been sold, or substantially

(Testimony of E. J. Beckett.)

all, to residents of the Pacific Gas and Electric territory?

A. Are you referring to common stock or preferred stock?

Q. I am referring to preferred and such part of the common as was not sold by virtue of rights to subscribe.

A. I would say a predominant proportion was sold to residents of this territory.

Q. From the beginning, however, to the end were there any particular changes made in the method of distribution?

A. No. The experience of the company was that after the stock became better known it was easier to sell, it was found unnecessary in the later offerings to pay any commissions in connection with the sale, and the advertising was practically limited to a few newspaper advertisements. There was no change in the method excepting that there was less trouble in selling the stock.

Mr. Phleger: I will offer in evidence—— [714]

The Examiner: 44.

Mr. Phleger (continuing) ——as Applicant's Exhibit——

The Examiner: 44.

Mr. Phleger (continuing) 44, a statement headed "Pacific Gas and Electric Company summary showing increases in number of stockholders in California and outside California, July 1914 to June, 1940" and containing also a subsidiary table headed "Summary showing increase in par value of stock

(Testimony of E. J. Beckett.)

held in California and outside California June 1914 to June 1940", and a subsidiary, further subsidiary table, headed "Summary showing relative ratio of total capitalization and surplus represented by various classes of securities in the hands of the public, 1913 to 1940."

(The statements above referred to were marked Applicant's Exhibit No. 44 for identification.)

By Mr. Phleger:

Q. Mr. Becket, did you cause Exhibit 44 to be prepared? A. Yes sir.

Q. And are the facts and figures set forth thereon true and correct? A. They are.

Q. Will you explain what that exhibit shows?

A. The first table in the exhibit which was labeled "Table A" is intended to show the very marked increase [715] in the number of stockholders during the period from the inception of the customer ownership plan in 1914 up to approximately the present time, June 1940.

It shows that in June, 1914 the company had 2,898 stockholders, of whom 1,115 or 38½ per cent, were residents of California; and 1,783 or 61½ per cent, were located outside of the state.

In June, 1940, the preferred and common stock was owned by 95,836 stockholders of record, of whom 69,279, or 72.3 per cent, were residents of California; and 26,557, or 27.7 per cent, were outside residents.

(Testimony of E. J. Beckett.)

The increase—there was an increase during this period of 68,164 in California stockholders and 24,774 in outside stockholders.

Q. Is it fair to say, Mr. Beckett, that sales of company stocks during the period 1914 to 1940, in the method that you have described, has resulted not only in greatly increasing the number of holders of stock, but of locating the holders of stock in California to a relatively greater extent than was previously the case?

A. Yes sir. That is demonstrated by Table B, which shows that, in June, 1914, approximately 41.2 per cent of the company's total outstanding stock capitalization was held in California, and 58.8 per cent was held outside of the state. [716]

In June, 1940, 48 per cent of the total outstanding stock was held in California and 52 per cent outside of the state.

During that period there was an increase of 704½ per cent—704.5 per cent—in the par value of stock held in California contrasted with an increase of only 510.7 per cent in the par value of stock held outside the state.

Q. So that not only were the number of stockholders resident in California increased very greatly in proportion to those outside the state, but there was actually an increase in the relative proportion of stock held by those stockholders?

A. That is correct.

Q. Is that correct?

(Testimony of E. J. Beckett.)

Now, will you explain Table C?

A. Table C shows the relative ratio of total capitalization and surplus represented by various classes of security in the hands of the public at the close of 1913, prior to the inception of the customer ownership plan, and at June 30, 1940.

At the end of 1913 bonds and cost represented 64-1/10 per cent of all capitalization and surplus, preferred stock represented 8 per cent, common stock 25.6 per cent, surplus 2.3 per cent. [717]

June 30, 1914—or 1940, bonds and costs represented only 45.4 per cent of the total capital capitalization and surplus; preferred stock 21.3 per cent; common stock 24.8 per cent, surplus 8.5 per cent.

Q. What in your opinion are the principal benefits which have accrued to the company through its conception and execution of this program of customer ownership?

A. It is my judgment that the policies of securing a wide distribution of stock ownership through this territory has been of material benefit to the company, to its security holders and to its customers.

This customer ownership plan has provided a reliable auxiliary means of financing at relatively nominal expense, even at times when capital would ordinarily be difficult or unduly expensive to procure.

(Testimony of E. J. Beckett.)

It has been an important factor in building up the equity back of the company's bonds, improving the market for its senior issues and reducing the cost of money with the resultant reduction in rates for gas and electricity; it has provided many thousands of people in all walks of life with a relatively well protected medium for investment of their securities in an industry supplying industry services to a large number of California communities and industry, and in general it has been a general means of fostering sound public relations in this territory by [718] providing a better understanding among the local public of the company's business and policies.

The Examiner: Before you go further, I think the record should show this document, which has been offered as Applicant's Exhibit No. 44, will be received in evidence and marked as Applicant's Exhibit 44.

(The document above referred to was marked Applicant's Exhibit No. 44 and was received in evidence.)

By Mr. Phleger:

Q. Now, what effect, if any, did the conduct of the campaign through the company's employees have on those employees?

A. I think it was beneficial in two ways: In one direction it gave them an added interest in the company's affairs because they themselves subscribed to stock in a number of cases and to a

(Testimony of E. J. Beckett.)

larger number of employees it was beneficial because it gave them an incentive to learn more of the company's business so they could talk up the sale of the stock to their friends.

Q. Did it have the result of bringing the employees into close contact with larger numbers of residents in their respective areas?

A. Undoubtedly, yes.

Q. I show you Applicant's Exhibit 29, which shows [719] stockholders located in company divisions as of August 1, 1940. Referring to that will you state the relative proportion of company stockholders who are resident in the company territory as compared with the balance of California?

A. In the company territory there are 58,000, or there were on August 1, 1940, 58,472 stockholders owning 4,705,948 share of stock.

In the balance of California there were 10,670 stockholders owning 861,584 shares of stock; total California stockholders 69,142, and total stock held 5,567,532 shares of preferred and common stock.

Q. Would it be fair to say that approximately 6/7ths of the number of California stockholders holding approximately 6/7ths of the stock held in California are resident in the company's territory?

A. Yes, I would say that would be correct.

Q. Yes.

The Examiner: What exhibit was that to which you referred?

Miss Calkin: 29.

(Testimony of E. J. Beckett.)

Mr. Phleger: 29, Applicant's 29.

The Examiner: 29.

By Mr. Phleger:

Q. Mr. Beckett, during your connection with the [720] company have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is controlled directly or indirectly by the North American Company or that the management or policies of Pacific Gas and Electric Company are subject to a controlling influence directly or indirectly by the North American Company? A. No sir.

Mr. Phleger: That is all.

The Examiner: You want to defer cross examination and take Mr. Chickering who is now in the audience?

Miss Calkin: Could we have a short recess now?

The Examiner: Yes, have a five minute recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: The hearing is resumed; Mr. Chickering has resumed the stand. You had—had you begun your cross examination of Mr. Chickering?

Miss Calkin: No, I hadn't started that.

ALLEN L. CHICKERING

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Cross Examination [721]

By Miss Calkin:

Q. Mr. Chickering, I believe you testified that you owned no stock in the North American Company. Do you own stock in the other subsidiaries of the North American Company?

A. Not that I know of. I don't know what they are.

Q. Well, they are primarily the operating companies in Cleveland, Washington, Milwaukee and St. Louis.

A. No, I don't own any.

Q. I believe you testified you are acquainted with Mr. Freeman?

A. I think I met him once, maybe twice. I wouldn't know him if I saw him now.

Q. You met him in New York, if you met him.

A. Yes, I went to see Mr. Black there.

Q. You referred in your direct testimony to a gas rate case. Could you describe that case briefly?

A. Oh, yes the—we got natural gas in here about 10 years ago and the Railroad Commission established rates which we thought were to extend beyond the time that we had recovered the loss resulting from intorducing natural gas.

By that I mean natural gas had a heating quality

(Testimony of Allen L. Chickering.)

of approximately twice the manufactured gas which we had previously been serving, and having that higher heating [722] quality naturally people wouldn't need to use as much, and it was therefore felt that our consumption would go down and it would take a couple years before the increased use, due to the cheaper and better fuel, would bring our earnings back.

Well, during that period the Railroad Commission was just beseiged by cities for lower rates and they established a lower rate which our people thought was too low, and there was a controversy in our organization as to whether it should be taken to the Federal Court or not.

That is what I referred to.

Q. You mean, the directors were opposing taking the case to the Federal Court?

A. I was, yes.

Q. And was the case taken to the Federal Court?

A. Yes.

Q. And that was during what period, whose presidency? A. Mr. Hockenbeamer.

Q. Mr. Chickering, I believe you testified at one time you were a member of the Board of the Standard Gas and Electric Company?

A. No, I never had any connection with them except I was attorney for a while; I never owned any stock or held any office, but I was their attorney for some years.

(Testimony of Allen L. Chickering.)

Q. Were you on the Board of the San Diego Company? [723]

A. Oh, yes. I had been on the Board of San Diego for probably—well, over 20 years, maybe 25.

Q. And you are still a member of that Board?

A. Still am.

Q. Did you represent the Standard Gas & Electric Company in the transaction which resulted in that company's acquisition of the securities of the applicant in 1927?

A. Yes, I did the legal work, yes—drew the contracts.

Q. And Mr. John J. O'Brien was on the Applicant's Board shortly thereafter as representative of the Standard Gas & Electric Company. Is that correct? A. That is right.

Q. When did Mr. O'Brien die, approximately?

A. Well, I should say, for a guess, that it was in 1936. I am not sure, though.

Q. Well, now when you went on the Board of the Applicant did you go on as a representative of the Standard Gas & Electric Company?

A. Originally, yes, I was vice-president of the Sierra and San Francisco Power and the Coast Valleys Gas and Electric and the Western States Gas & Electric which the Pacific Gas and Electric Company acquired as a part of that transaction; and Mr. O'Brien and I were elected directors of the Pacific Gas and Electric Company when those properties [724] were taken in as representing those interests,

(Testimony of Allen L. Chickering.)

but as far as I am concerned that long since terminated.

Q. So originally the Pacific Gas and Electric Company had two representatives on the Board, yourself and Mr. O'Brien? A. That is right.

Q. And Mr. Palmer, who was elected to succeed Mr. O'Brien, took his place on the Board, was not elected as a representative of the Standard Gas & Electric Company?

A. No connection with it at all.

Q. And you do not now consider yourself a representative of the Standard Gas & Electric Company?

A. I have no connection with them at all and I haven't had for a long time.

Q. And you say that in spite of the fact that the San Diego Company is a subsidiary of the Standard Gas?

A. Yes. That is an operating company. I am a heavy stockholder in it, and my family is a heavy stockholder in it, and the Standard holds the control of it.

Q. Are you acquainted with Mr. Emanuel and Mr. Crosley?

A. Never have seen them or spoken to them.

Q. Are you acquainted with Mr. Lynch?

A. Yes. He was an old Standard and Byllesby man. I have known him since he was a young man. In 1910 I think [725] I met him. But he isn't connected with Standard now as far as I know.

(Testimony of Allen L. Chickering.)

Q. Yes, I think that is true. I mean he was president of the company until the last few months?

A. That is right.

Q. Would you say that the Standard Gas & Electric Company has no representative on the Applicant's Board at the present time?

A. That is right.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No. I was trying to think if I had ever had anything to do with them. I don't think I ever did. I represented the underwriters in connection with a bond issue that they put out once. I don't remember much about it. But I think I represented Blyth & Company and Pierce-Fair in connection with it.

Q. Were Blyth & Co. the underwriters for the Western Power Corporation?

A. They were for that issue; that is all I know.

Q. Do you recall about when that was, or do you know whether it was when North American had control of the Western Power Corporation System, or before that?

A. I don't know. I didn't know anything about the North American Company at all. The only thing—until [726] this transaction took place whereby the Pacific Gas & Electric Company acquired the Western Power Corporation properties I rather doubt whether I had ever heard of the North American Company. I didn't have anything to do with it.

(Testimony of Allen L. Chickering.)

Q. You mean in 1929 and 1930 you had no knowledge that the Western Power Corporation was controlled by the North American Company?

A. I don't know; I can't remember.

Q. As a director of the Applicant——

A. (interposing) Oh, yes, I did. I did know that some New York Company had got control of it, but I didn't know anything about the company. I did know that some New York Company got control of the Western Power Corporation; that is right.

Q. Who had the control of that system before North American controlled it?

A. I don't know. I remember a man named H. P. Wilson, who used to be around in connection with it, and Mortimer Fleishhacker, but whether they controlled it or not I have no idea.

Q. Was Mr. Wilson a California man?

A. I never met him but a few times. It runs through my head—I am more or less speculating—that he was a member of a brokerage firm here of Brown & Wilson at sometime, but I didn't know him then. How long he was here or his [727] antecedents, I don't know.

Q. Prior to 1925 was Western Power Corporation reputedly controlled by California interests or Eastern interests? A. I don't know.

Q. As a director of the Applicant what contacts have you had, or do you have, with the Vallejo Electric Light & Power Company?

(Testimony of Allen L. Chickering.)

A. None whatever, with one exception: When the last three Pacific Gas and Electric Company bond issues were put out we represented the underwriters, my firm, and we thought it was necessary to make an investigation of the stock holdings of the Pacific Gas & Electric Company, and whether the stock of companies that they were interested in had been validly issued and things of that sort, so I sent a young man from our office up to investigate the Vallejo Light & Power Company corporate proceedings.

Personally, I have never known any of the Vallejo Light & Power people at all. In fact, I don't even, can't even recall the name of the people who control it.

Q. Are the operating problems of that company considered and taken up at Board meetings of the Applicant? A. Never.

Q. I believe you testified that Mr. Hockenbeamer carried on the negotiations on behalf of the Applicant with [728] the North American people in 1929 and 1930? A. That is right.

Q. And that the Applicant was very anxious to acquire those properties?

A. Some of the Applicant.

Q. You mean some of the directors?

A. Yes.

Q. You testified that you represented the Standard Gas & Electric Company in the acquisition at the time the Applicant acquired a large, some of

(Testimony of Allen L. Chickering.)

the subsidiaries of the Standard Gas & Electric Company. As attorney for the Standard Gas & Electric Company at that time do you recall that company being required to give a written assurance as to the extent of its participation in the affairs of the Applicant?

A. No. That was thirteen years ago. I don't recall it.

Q. Do you recall anything that occurred at that time in the way of an assurance on the part of the Standard Gas & Electric Company that it would not take an active participation in Applicant's affairs as the then largest stockholder?

A. No. The contract which covered all these essential points was only two pages long, as I prepared it, and I don't think there was anything about that in it at all.

Now, Mr. O'Brien and Mr. Creed had many discussions [729] when I wasn't there. As far as I can recall, I can't remember any; maybe there were, but I can't remember any.

Q. Do you recall any provision in that contract relating to the disposal of the stock of the Applicant by Standard Gas & Electric Company?

A. It is too big a stretch on my memory; I can't remember.

Q. And you don't recall any discussion having taken place at that time regarding the extent to which Standard Gas & Electric Company would participate in Applicant's problems?

(Testimony of Allen L. Chickering.)

A. No. I know that Standard Gas never made any effort to control me as a director of the Pacific Gas and Electric Company. In fact, I voted the way I thought was right and in one instance, at least, I voted against what they thought was right.

Q. You don't recall then anything that would indicate that Applicant's Board in 1927 was apprehensive that Standard Gas & Electric Company, as one of the large holding companies, might attempt to control the Applicant?

A. Well, it seems to me that there was something, but I can't remember it. Your suggestion makes me think that there was something, but it is too long ago and I can't recall it.

Q. What discussion was had in 1929 and 1930 concerning [730] the extent to which it was contemplated that North American might participate in the Applicant's affairs if it acquired a large block of its common stock?

A. Well, naturally all we knew was what Mr. Hockenbeamer told us and I for one, and several other directors, were apprehensive of any holding company acquiring such a large interest and we voiced that apprehension in the meetings of the Executive Committee. Mr. Hockenbeamer told us that the North American Company would take an investment interest only and would not make any effort to control us. He also told us that they would not increase their proportionate ownership in our stock. Whether there was any agreement to that

(Testimony of Allen L. Chickering.)

effect or not, I don't know, but we took Mr. Hockenbeamer's word for it.

Q. Would you say that those assurances by North American were received at the insistence of certain members of the Applicant's Board?

A. Well, I think that all of us felt that way, Miss Calkin. I think even Mr. Hockenbeamer felt that way.

Q. But you had no discussions personally with any representatives of the North American on the subject?

A. No. I knew Mr. Black very well, but in the particular instance the only knowledge I had that he was here was through Mr. Hockenbeamer reporting having seen him. [731]

Q. What was the understanding with reference to North American's representation on Applicant's Board in the event that it acquired a block of your securities?

A. Mr. Hockenbeamer told us that they were to have three members on the Board of Directors; name three members of the Board of Directors.

Q. What about the Executive Committee?

A. Mr. Earl was put on the Executive Committee, which was enlarged to include him, but it is hard for me to testify with regard to what somebody else did and told me; so whether that was a part of the agreement or whether he was elected as a matter of course, I am unable to say.

Q. The representation on Applicant's Board by North American then was pretty largely worked

(Testimony of Allen L. Chickering.)

out by Mr. Hockenbeamer?

A. Entirely, as far as I know. I had nothing do with it.

Q. Was the Board acquainted with that arrang ment prior to the time the transaction was consu mated? A. I would say yes.

Q. And the Board in effect approved the a rangement which Mr. Hockenbeamer had made?

A. I would say yes.

Q. How many representatives does Nor American now have on the Applicant's Board? [73

A. I think they have two; Mr. Freeman, I thi it is, and Mr. Fogarty.

Q. Do you know why North American has on two representatives on Applicant's Board rath than three members as was originally understood could have?

A. Well, I think it is largely due to the fa that we didn't elect a North American man aft the vacancy occurred. We elected, as I recall, M Wishon to fill the vacancy.

Q. I believe the record shows that Mr. Palm was elected?

A. He filled Mr. O'Brien's place.

Q. You don't recall then any conversations pr ceding Mr. Palmer's election to the Board to th effect that North American had relinquished i right to a third member in order that Mr. Palm might be elected?

A. No; because Mr. Palmer filled Mr. O'Brien place. I might say that when new directors a

(Testimony of Allen L. Chickering.)

elected the president has uniformly consulted at least with the Executive Committee. In other words, I have been consulted about the filling of every vacancy. I was consulted in the case of Mr. Palmer. I was consulted in the case of Mr. Wishon, Mr. Henry Nichols. I believe those are the recent ones. I think the president consulted with all the Board on such matters, I know he did with the Executive Committee, and [733] did with me.

Q. Well, in your conversations with the North American Company when you were in New York, and the occasions of Mr. Fogarty's visits here, have those representatives ever told you that North American's representation on Applicant's Board was not as important since Mr. Black was president of the Applicant as that representation was during Mr. Hockenbeamer's lifetime?

A. I never heard it suggested until you just suggested it now.

Q. Do you consider Mr. Black as a representative of the North American Company?

A. Most decidedly not. That was the reason I insisted on Mr. Miller telephoning back to require that he sever all connection with the North American Company before we elected him president.

Q. Mr. Black was, however, a representative of the North American Company on the Board until his election as president? A. I think he was.

Q. What do you know about the proxy machinery of the Applicant? By that I mean, who selects the

(Testimony of Allen L. Chickering.)

proxies and makes up the slate of directors before your annual stockholders' meeting?

A. Well, I never had any occasion to give it any [734] special attention. I believe that Mr. Black and Mr. Foote, and possibly one other, are usually selected as the proxies; and before Mr. Hockenbeamer's death he was one of them. It was perfectly satisfactory to me.

Q. Would you say that the president selects the proxies or does the Board make that selection, or the Executive Committee?

A. I have sort of a—I think the matter has come up to the Executive Committee, but it isn't important enough to have stayed in my memory.

Q. You are familiar, are you not, with the proxy statement which must accompany all solicitation of proxies under the S. E. C. rules? A. Yes.

Q. Do you know who prepares the slate of directors which is included in that proxy statement?

A. I think it comes up at the meeting of the Board, of the Executive Committee. If there has been some change, or something to fix it in my memory, it would have stayed, but I can't remember now.

Q. Do you know how the Applicant is advised as to who North American's representatives will be on the Board for the ensuing year? A. No.

Q. What directors, other than employees of the [735] Applicant, would you say were most active in the affairs of the Applicant?

(Testimony of Allen L. Chickering.)

A. The Executive Committee.

Q. You mean the directors who are members of the Executive Committee? A. Yes.

Q. How would you compare the functions of the Board with those of the Executive Committee?

A. Well, the Executive Committee meets once a week and usually takes quite a long time. You see, we have to run this company ourselves and we have to spend a lot of time studying our problems. We take sometimes as much as an hour and a half or two hours, and we all discuss the problems and express our views pro and con, which often differ materially from each other.

The Board of Directors meets approximately once a month and everything that has come up in the Executive Committee, with the exception of merely routine matters, is brought up to the Board. To a member of the Executive Committee many times it is a little tedious because a matter is rehashed that they have heard discussed in the Executive Committee meetings. But the Board of Directors is fully advised and takes a full part in everything except purely formal matters, such as making quit claim deeds to unneeded rights of way or passing on the issuing of new stock certificates, [736] and things of that sort.

Q. Does Mr. Black ever advise the Board or the Executive Committee at its meetings as to North American's recommendations or viewpoints on the particular matter when the subject is being consid-

(Testimony of Allen L. Chickering.)

ered by the Executive Committee or by the Board?

A. As far as I know he has never mentioned them.

Q. What about Mr. Hockenbeamer, did he frequently advise the Board or the Executive Committee as to communications he had received from North American on a particular problem?

A. No. As far as I know he never received any; maybe he did.

Q. Since you have been a director have you ever been advised from any source what North American's desires were with respect to a particular matter?

A. Yes. Once in 1935 we cut the dividend from 8 per cent to 6 per cent.

Q. I believe that was in 1933, wasn't it?

A. Was it in 1933?

Q. I think the previous testimony shows that.

A. All right—1933. I was not at the meeting. I attended a funeral of a friend in Stockton so I wasn't at the meeting. But the dividend was cut by a divided vote and after the meeting I saw Mr. Earl, and he was indignant [737] at the dividend being cut and said that he thought that his principals would be too, but we didn't change it.

Q. And his principals referred to the North American Company? A. That is right.

Q. Has the Board or the Executive Committee ever asked Mr. Black whether he had conferred with North American people on certain major problems

(Testimony of Allen L. Chickering.)

and, if so, what suggestions North American has made? A. No. We don't care.

Q. What weight would you give to any suggestion made by North American in view of the fact that that company is your largest stockholder?

A. None whatever.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black since he has been president?

A. None that I recall.

Q. Has the Board ever disapproved a matter recommended by Mr. Black?

A. We have argued things back and forth with him over and over again. There was much more disagreement with Mr. Hockenbeamer than with Mr. Black.

Q. Why was that true?

A. As far as I was concerned, because I didn't agree with him on lots of things and I stayed with my point of view. [738]

An example was the financing in, I think, 1935, before Mr. Hockenbeamer died, and there was an underwriter from New York out here by the name of Mr. Russell. He suggested that we issue $45,000,000 serial bonds maturing $3,000,000 a year, at an interest rate of 3-½ per cent, which was then considered low. When that was put up to the committee I stood out against it on the ground that the company, in such bad times as that, could not af-

(Testimony of Allen L. Chickering.)

ford to agree to pay $3,000,000 a year in serial maturities.

The committee was against me, but I believe they later came to my point of view on it.

Q. Were the notes issued as proposed by Mr. Hockenbeamer or by Mr. Russell?

A. They were not; the serial notes were not issued. The serial bonds were not issued, but a 30 year bond issue was put out at a higher rate of interest.

Q. And that was not the plan originally submitted by Mr. Russell?

A. Well, I never saw him but once at that time and, therefore, Mr. Hockenbeamer had the conversations with him and it would be drawing on my imagination to state what he suggested. But the first thing that came to my notice was the 15 year serials of $3,000,000 a year, and I was opposed to it.

Q. Did the bonds that were issued have a sinking [739] fund provision? A. Yes.

Q. But the requirements were not that heavy?

A. They were 30 year 4 per cent bonds and the sinking fund is comparatively small. This wasn't a sinking fund. It was a serial maturity.

Q. I understand. So, in your opinion, the relationship between Applicant's Board and Mr. Black has been more harmonious than the relationship was between Mr. Hockenbeamer and the Board?

A. Yes. Of course, I have a definite reason for thinking that, but I won't give it unless you want it.

(Testimony of Allen L. Chickering.)

Q. I would like to have it if you don't mind giving it.

A. I think Mr. Black is the best utility executive I have ever seen, and he is right on the job all the time in running this company and what he suggests he has talked over carefully with the members of the Board and Executive Committee before it comes up and we understand pretty well what it is about, and it is right according to our views.

Q. You mean by that that Mr. Hockenbeamer was more inclined to run the company without such advice of the Executive Committee?

A. I will put it this way; If Mr. Hockenbeamer was right, I was wrong, and vice versa, many times. I don't [740] know which was right.

Q. Mr. Chickering, do you feel free to act on any problem confronting the Applicant without receiving North American's recommendations regarding the particular matter?

A. Yes; most decidedly so.

Q. In your direct testimony you testified to everything that you know concerning Mr. Black's selection as president of the company?

A. Oh, I have covered the head notes of it. There were a few other odds and ends. Mr. Miller, Mr. Elsey and I consulted several times, and I had to look up some matters with regard to Mr. Black. The one thing that I didn't know about Mr. Black directly was his ability in operating and I had to look that up for the three of us, which I did. I

(Testimony of Allen L. Chickering.)

knew his public relations had been good because living here I knew that while he managed the Great Western Power Company, in spite of some difficulties that the company had, that he brought its public relations up in good shape. But I wasn't 100 per cent familiar, never having had any business with him, with his operating ability and I had to look that up. I did.

Q. Did you make that investigation before Mr. Miller was delegated to contact Mr. Fogarty?

A. Oh, yes. [741]

Q. So that the members of the Executive Committee were in accord on Mr. Black's selection prior to the time any contact was made with Mr. Fogarty?

A. That is right.

Q. Do you know whether or not the question of salary was ever discussed with Mr. Black at the time he came out here?

A. No, it wasn't prior to the time. In fact, I discussed the question of salary with him, having been deputed to do so by Mr. Miller and Mr. Elsey, but I did it in their presence.

Q. That discussion took place after Mr. Black's election?

A. No. It was in the American Trust Company.

Q. I believe the record shows that Mr. Black was elected prior to his coming to California.

A. Well, then, it was after he came to California because it was in the American Trust Company here, and it was when he came out following our

(Testimony of Allen L. Chickering.)

long distance telephone conversation with him through Mr. Miller; but whether it was before or after he was elected, I can't say.

Q. But as far as you know there were no salary discussions prior to his coming here?

A. That is right. I had all the salary discussions with him myself. [742]

Q. And if he had been elected prior to this time the salary discussions took place after his election?

A. That is right. But if he hadn't been elected it took place before, because personally I would have thought it took place before, but I don't know.

Q. Was the possibility that Mr. Black, because of his association with North American might be influenced and dominated by North American, considered and discussed by the members of the Executive Committee, or the Board, when he was considering his selection?

A. Yes. None of us thought so.

Q. If you had been of that opinion would you have elected him as president? A. No.

Q. Was the Board at that time as zealous of maintaining the management of the Company in California as it was in 1930, in your opinion?

A. Fully as much so, I would say. In fact, Mr. Black's connection with the North American Company was a black mark against his name that we gave the biggest consideration in connection with choosing him, and it was only after we determined to our satisfaction, or to the best of our judgment

(Testimony of Allen L. Chickering.)

that he would not be influenced by North American that we decided to elect him.

Q. Do you consider the influence of North American in [743] the affairs of the Applicant detrimental? I mean, if there should be such an influence would you consider it detrimental to the interests of the Applicant?

A. I don't like holding company influence; any holding company influence.

Q. Before Mr. Black was offered the position did the Executive Committee, or the Board, receive any assurance from him as to his future attitude toward any suggestions which North American might make?

A. Well, we telephoned back to him and told him that he would have to sever all connection with the North American, and he said of course he would; that that went without saying. That was reported to me by Mr. Miller. That was enough assurance for me.

Q. And so far as you know, prior to Mr. Black's election as president no member of the Board discussed with him the effect, or what effect his prior association with North American would have upon his susceptibility to North American recommendations?

A. I don't know what Mr. Miller said to him, except as he reported to me. I was insistent that he should be clear of the North American Company, and I insisted on spending the money to telephone

(Testimony of Allen L. Chickering.)

back to him to find out that he would be. I thought that he would be. I thought that his taking the position would mean that he would be [744] clear of the North American Company, but I continued to make sure that he was, so I insisted on Mr. Miller calling him back, which Mr. Miller didn't think was necessary, but finally did.

Q. Do you think it would be possible for North American to exert a very substantial influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even though North American representatives never have attended Board meetings, or had any contacts with any of the other directors?

A. That is an awfully hard question to answer because they might have a very benign influence that would be so benign that we wouldn't recognize it as having come from them. I am inclined to be very heavily influenced by what Mr. Black says,—that is an answer to your question.

Q. You do not know of your own personal knowledge the extent of Mr. Black's contacts with the North American people?

A. Well, I don't know fully, but he hasn't been East very much, and they haven't been out here except when Mr. Fogarty has been out here to the Bohemian Jinks once or twice. No, I don't know.

Q. Then it would be possible for Mr. Black to obtain advice from the North American Company on major problems without your knowledge?

(Testimony of Allen L. Chickering.)

A. I don't believe it would because he is talking to [745] us all the time, and he questions us for our views, never brings the North American Company in at all. In fact, I don't think that the North American Company has a darned thing to do with it.

Q. Would you say that there have been no major changes in the operating or financial policies of the Applicant which has been put into force since Mr. Black has been president?

A. In the financial progress of the company Mr. Black, after thoroughly consulting with the Executive Committee, continued on the same program of refinancing that Mr. Hockenbeamer had started, except that at the urgency of some of the members of the committee he made a California house the head of our underwriting syndicate instead of a New York one, that being Blyth & Co., instead of a New York house.

Q. Are you familiar with the reports which the Applicant sends to the North American Company?

A. I didn't know they sent any.

Q. Then so far as you know North American doesn't receive any information concerning the Applicant other than that received by any other stockholder?

A. Not that I know of. I never have anything to do with them at all. It is just speculation, because I never have anything to do with them, or have any connection [746] with them at all.

(Testimony of Allen L. Chickering.)

Q. Do you know whether or not a copy of Applicant's proposed budget is submitted to the North American Company for review or suggested changes prior to the time it is approved by the Board?

A. They certainly do not.

Q. Do you know whether or not North American is consulted regarding major construction projects before the same are acted on by the Board?

A. I do not.

Q. Do you know whether or not North American has been consulted regarding any phase of the Hetch Hetchy situation?

A. I have no knowledge of any such consultation whatever.

Q. Who recommends the payments of dividends to the Applicant's Board?

A. Well, I don't know as anybody does particularly. We first ascertain whether we have—oh, yes, Mr. Black recommended the increase in the dividend. After several years of 6 per cent dividends he recommended the increase to 8 per cent. I believe since that time he—I believe the next time the dividend came up he said something to the effect that he thought we might be able to pay the regular rate again. Since that about all he has said is, "Next [747] on the list is to take up the matter of the common stock dividend." Some person moves it be declared, and someone seconds it, and it is carried. We first look up to see if we have earned

(Testimony of Allen L. Chickering.)

it, but when we have there is no particular formality about it.

Q. Has Mr. Black ever told the Board or Executive Committee at a meeting attended by you what North American's ideas on the subject of dividends on the common stock were?

A. Never mentioned it.

Q. Have you ever discussed the matter of Applicant's dividend policy with Mr. Fogarty or any representatives of the North American Company?

A. No, except as I told you awhile back, that Mr. Earl was very indignant when the dividend was reduced, and told me so. I listened to him; that is all.

Miss Calkin: Will you mark this (indicating) for identification?

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 18 for identification.)

By Miss Calkin:

Q. Mr. Chickering, I hand you what has been marked for purposes of identification as Commissioner's Exhibit No. 18, and will ask you if you can identify from that photostat what it is supposed to be. [748]

A. That (indicating) is my signature.

Miss Calkin: We offer that in evidence as Commission's Exhibit 18.

The Examiner: You have seen that, Mr. Phleger?

Mr. Phleger: Yes; I have a copy of it here.

(Testimony of Allen L. Chickering.)

Mr. Gerdes: It is dated July 1, 1930?

The Examiner: Yes. It will be received in evidence and marked Commission's Exhibit No. 18.

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 18 and received in evidence.)

By Miss Calkin:

Q. In that letter I believe you referred to your desire to discuss certain matters with Mr. Black shortly after the consummation of the transaction in which North American acquired a substantial block of the common stock of the Applicant.

What matters were you anxious to, or desirous of discussing with Mr. Black at that time?

A. I guess it was rather a simple matter, but I had four particular friends in the Great Western Power Company organization that I didn't want to see lose their jobs.

Mr. Hockenbeamer had told us how much could be saved through the consolidation of the companies and I knew that meant letting a lot of men out. I had four particular [749] friends in the Great Western Power Company, namely, Mr. Wishon, Mr. John W. Wrenn, W. H. Spaulding and Mr. Robert Sharon. I knew these people personally, but I didn't know about their ability and I was anxious to see them retained in the consolidation. I had hoped to get his slant about their abilities so as to give me some fuel in talking with Mr. Hockenbeamer.

(Testimony of Allen L. Chickering.)

Mr. Spaulding I had known since youth. Mr. Wrenn had been the manager of a gas company of which I was a member of the Executive Committee in Los Angeles. Mr. Sharon's family I had known since youth. Mr. Wishon and I had been great friends for many years. I was anxious to see them all retained and I wanted to get some assistance from Mr. Black as to their abilities to enable me to put up a fight for them.

Q. What further correspondance have you had with representatives of the North American Company?

A. Oh, I probably have written Mr. Black. For example, I always used to attempt to see him when I was in New York, on account of a warm personal friendship and admiration for him, and if I missed him he might write me saying he was sorry that he had missed me, or something of that sort.

I don't recall, but if you have got any other letters I could identify them.

Q. I don't have any others. Have you had any [750] correspondence with any of the representatives of North American since Mr. Black has been president of the Applicant?

A. I don't remember any, except Dave Hawkins who, I believe, is their attorney, and he is a good personal friend of mine. I don't think I have ever written to him anything about any Pacific Gas and Electric Company matters.

(Testimony of Allen L. Chickering.)

Q. Is he associated with the firm of Sullivan & Cromwell? A. Yes.

Q. Has Sullivan & Cromwell done any work for the Applicant?

A. No, not that I know of.

Q. In connection with the transaction in 1930 was there any discussion that you can now recall as to whether or not the bankers for the Western Power Corporation system would have any claim on the financing business of the Applicant?

A. I don't even know who they were. I don't believe there was.

I don't want to leave that with a loose end. I had represented, as I recall, Pierce-Fair & Co., and Blyth & Co., in connection with the Western Power Corporation debenture issue of $10,000,000 sometime prior to this transaction in 1930—is that it?

Q. Yes. [751]

A. (Continuing) —but I don't think I had any idea of whether they were the regular bankers for the Western Power or whether they just handled that particular issue. I don't recall their having been brought into this matter at all.

Q. Do you know how it came about that the National City Company got the leadership of all of the Applicant's financing from about 1921 until 1931 when the National City went out of business?

A. No. That was before my time.

Q. The Applicant I believe, the testimony shows, issued $25,000,000 principal amount of bonds in

(Testimony of Allen L. Chickering.)

1930 and $25,000,000 in principal amount of bonds in 1931. Do you know who proposed these two pieces of financing to the Board?

A. I don't remember it now. Probably the president, though.

Q. Do you know who selected the National City Company to head these two pieces of business?

A. I have an impression, but not knowledge, that Mr. Hockenbeamer did.

Q. Did you have anything to do with the participation of any of the members of the syndicate which purchased those two issues?

A. I endeavored to get Byllesby & Co., which was an [752] underwriting house connected with the Standard Gas & Electric Company, in that syndicate, and I may have tried to get Blyth & Co., and Pierce-Fair, in that syndicate, and probably did, but I can't remember that now.

Q. I believe the evidence shows that Blyth & Co. had the second position—scratch that. The information isn't here.

Do you know who carried on the negotiations between the principal underwriter, that is, National City Company, and the applicant in connection with the 1930 and 1931 issues?

A. Again, I don't know, but I think it was Mr. Hockenbeamer. I know I had nothing to do with it.

Q. Do you know whether any one connected with Blyth & Co. ever expressed any dissatisfaction with their position in the 1930 and 1931 issues?

(Testimony of Allen L. Chickering.)

A. I have heard so recently.

Q. You do recall the $45,000,000 issue in 1935 that you previously testified about?

A. Yes.

Q. At that time I believe the National City Company was no longer engaged in the investment banking business. What was the first thing that you can now recall as having heard as to who would succeed to the position of the National City Company in Applicant's financing?

A. A gentleman by the name of Mr. Stanley Russell, [753] who was connected with the firm of Lazard Freres & Co. in New York and who, I think, had previously been connected with the National City Company, came out as representing the underwriting houses and was introduced to me by Mr. Hockenbeamer in his office.

Q. Do you know whether or not North American was consulted regarding the leadership of the syndicate that purchased the March 1935 issue?

A. I haven't any idea. Mr. Hockenbeamer was a very affirmative gentleman, though, and accustomed to having his head. I doubt whether they were; but may be they weren't.

Q. Who would you say was responsible for the selection of Lazard Freres & Co. to head the 1935 syndicate? A. Mr. Hockenbeamer.

Q. Did any members of the Executive Committee, or the Board, voice their disapproval of the selection of that firm? A. I don't remember.

(Testimony of Allen L. Chickering.)

Q. You met Mr. Russell through Mr. Hockenbeamer?

A. Yes.

Q. You had no personal acquaintance with him prior to that time?

A. Never saw him before I met him in Mr. Hockenbeamer's office.

Q. Was that in connection with the 1935 issue?

[754]

A. When we were discussing this 15 year serial. I was in talking with Mr. Hockenbeamer about something else and Mr. Russell came in and Mr. Hockenbeamer said that Mr. Russell was there and that he would have him come in and introduce me to him. He did.

Q. Were there any other banking houses seeking the leadership of Applicant's financing in the spring of 1935?

A. I didn't have anything to do with it. I remember that Blyth & Co., Byllesby and Pierce-Fair —I can't remember who they were.

Q. Did any representatives of any of those firms contact you in an effort to get you to use your influence to get them the leadership?

A. No; no.

Q. You never discussed the leadership of the March 1935 issue with any representatives of the North American Company?

A. No. I have never seen them but three or four times in my life.

Q. Was there any discussion over the manner in

(Testimony of Allen L. Chickering.)

which the March 1935 issue was disposed of to the public? A. There was on my part.

Q. Did you voice your dissatisfaction to the other members of the Board?

A. I didn't vote for it in the Board of Directors. I [755] refused to vote.

Q. You refused to vote for what, the selection of Lazard Freres, or for the issuance of these——

A. (interposing) For the putting out of these securities. I didn't vote against it. I thought it was bad organization, but I didn't vote, and I was recorded as not voting.

Q. But did you express any dissatisfaction of the manner in which the issue was handled after the same had been sold to the public or to the underwriting group? A. Not that I recall.

Q. You are acquainted with Mr. Blyth?

A. Very intimately. He is one of my best friends.

Q. And he is the president, or the head of the banking firm of Blyth & Co.? A. Yes.

Q. Do you consider Blyth & Co. a California underwriting house? A. I do.

Q. Does your law firm represent the firm of Blyth & Co.?

A. It has for—oh, 22, 23 or 24 years, maybe.

Q. Did Mr. Blyth ever talk*ed* to you during 1935 regarding the desire of his firm to head Applicant's financing? [756]

A. Never mentioned it.

(Testimony of Allen L. Chickering.)

Q. Did you ever tell Mr. Blyth that you would assist his firm in getting that business?

A. No. I had already made the move before I ever said anything to Mr. Blyth and Mr. Blyth was away when I made the move.

Q. What move did you make?

A. As soon as Mr. Black became president I took up the matter of having Blyth & Co. head our syndicates, and my reasons for doing it were varied; the most important ones being that I thought, and I still think, that a California concern should sell its bonds in California, and through a California house, especially when we have houses of such high standing as a number of our houses here, like Blyth and Dean Witter and several others that I could name.

Another reason was that I was dissatisfied with the price we got for the previous bonds and the spread. I didn't like the idea of having Eastern financiers coming out here and telling us where we could get off on money.

Also, Mr. Blyth is one of my best friends and, in my opinion, as good, if not the best man in that business in the United States for fairness and judgment. So I wanted to get that house to represent the P. G. & E., rather than some New York house.

Q. But you never made any effort in that direction [757] until after Mr. Black became president?

A. I don't think I ever mentioned it until Mr. Black became president. Then I took it up on my

(Testimony of Allen L. Chickering.)

own volition and, incidentally, without knowledge of certain letters that a Blyth man in New York had written to Mr. Blyth out here, which I never heard of until several years afterwards.

Q. And you didn't express to Mr. Hockenbeamer any dissatisfaction over his selection of Lazard Freres & Co. to head the business?

A. I think I did. I told you a while back that I didn't on the first issue, but there were a couple of other issues and I think I did ask him why we couldn't have a California house heading it, especially when we had one that was as good as any of the New York houses. I think I did. But I am not quite certain of it.

Q. Applicant's Exhibit No. 42 shows that the Applicant sold a $45,000,000 bond issue in April of 1935 to the syndicate headed by Lazard Freres & Co., a $30,000,000 issue in July of 1935, headed by Lazard Freres & Co. and a $20,000,000 issue in September of 1935. A. That is right.

Q. And that those were all of the issues in 1935?

A. Yes.

Q. The next piece of financing by the Applicant was a $90,000,000 issue in April of 1936, the same exhibit shows. [758] Your conversation with Mr. Black regarding Blyth & Co.'s leadership was prior to the April 1936 issue?

A. Yes; that is right.

Q. What did Mr. Black say in response to the conversation?

(Testimony of Allen L. Chickering.)

A. The first time I saw him he let me give my reasons, which I have to some extent given to you, and he was quite non-committal, but that he would take it under consideration. The next time I saw him he told me he had decided to do it. Whether I had anything to do with influencing him, or whether he made up his own mind, or how it happened, I don't know; but that is the sequence of the events.

Q. And did you later discuss your conversation with Mr. Black with Mr. Ford of Blyth & Co.?

A. I discussed—yes, I did. I discussed the first conversation with Mr. Ford. Mr. Ford said that they couldn't do anything, or take any part in connection with it, or couldn't discuss it because they were members of a syndicate of which Lazard Freres & Co. was the head, and the ethics of the business forbade them to discuss anything of the kind.

I said, "Well, you don't need to because I am going to do it."

Q. Was the substance of Mr. Ford's remark that in [759] view of the fact that they had had a substantial position in the syndicates headed by Lazard Freres & Co. that they would want to appear as not seeking the business, but having the business given to them by the Applicant?

A. No. He said they couldn't discuss it; that it was not ethical to discuss it.

Q. Do you recall that at the time of your first

(Testimony of Allen L. Chickering.)

conversation with Mr. Black regarding this matter that Mr. Miller was present at the conversation?

A. No. Mr. Miller was not present. Mr. Black was alone with me in his office. I afterwards mentioned it to Mr. Miller, though.

Q. Mr. Chickering I hand you what purports to be a copy of a letter dated December 19, 1935, from Mr. Ford to Mr. Blyth, for the purposes of refreshing your recollection.

A. (Referring to letter indicated) That is probably Mr. Ford's recollection. I did discuss the matter with Mr. Miller. I wouldn't have said that Mr. Black was present, but Mr. Miller—"I couldn't very well have any objection as one of the partners in the firm is my son-in-law"—referring to Mr. Ford. But I don't think that Mr. Black was present at that conversation. I think that Mr. Ford, in writing this letter, had perhaps put in his own impression on the matter. The way I told it to you is the way I recall it. [760]

Q. Did Mr. Miller, when you talked to him, give you the opinion that he was more favorable to Blyth & Co.'s leadership than he was to that of Lazard Freres & Co.?

A. Well, what I just said would indicate that. He said, naturally—I think his words were substantially: "Well, naturally I am in favor of your efforts because one of the partners of Blyth & Co. is my son-in-law" referring to Mr. Ford. That would indicate that he was favorable, according to my interpretation.

(Testimony of Allen L. Chickering.)

Q. Do you know whether or not Mr. Black conferred with any representatives of the North American Company prior to the Board's approval of the issue of the $90,000,000 in bonds?

A. I have no idea.

Q. I believe you testified at the time you talked to Mr. Black the second time regarding Blyth & Co., he told you that he had desired to let that firm head the syndicate? A. That is right.

Q. Do you know why Lazard Freres & Co. was reduced to fifth position in the $90,000,000 issue?

A. I had nothing to do with it. I know nothing about it.

Q. Did you or the Board have anything to do with the selection of the other syndicate members?

[761]

A. Well, I was awfully anxious to give California houses a chance. That is one of the objections I had had to the handling by the New York syndicate, that the California houses, in my opinion, didn't have enough of a chance. I spoke in favor of Dean Witter & Co., and also, I believe several other smaller houses. In fact, I know I did. I also tried to see that Byllesby & Co. was in the syndicate as I was friendly with them and anxious to see them stay in the syndicate.

Q. Do you know whether or not North American was more favorable to Blyth & Co.'s leadership than it had been to that of Lazard Freres & Co.?

A. I haven't any idea. I never thought of it in connection with it.

(Testimony of Allen L. Chickering.)

Q. Do you know the circumstances which resulted in Dillon Read & Co. getting a substantial participation in the $90,000,000 issue?

A. Well, I heard—do you want me to tell you what I heard?

Q. Yes.

A. I heard that the $90,000,000 issue was considered to be rather a substantial chunk for one syndicate to bite off and it was believed that on an issue of that size it was a good idea to have a little assistance, and that Dillon Read & Co. and, I think, Morgan Stanley, were taken in, [762] according to my recollection, for $15,000,000 apiece, just for that one job. They weren't taken in the syndicate permanently, but for that one job, on account of the very large amount of bonds that were being marketed. That was, I think, the biggest issue that had been put out of utility bonds at that time; close to it anyway.

Q. Who gave you that information?

A. I think it was Mr. Blyth.

Q. Do you know whether or not Dillon Read & Co. was included at the suggestion of the North American people? A. I haven't any idea.

Q. Did you know at that time that Dillon Read & Co. had done a considerable amount of financing for the North American system?

A. Never heard of it until now, if it is true.

Q. Do you know where the negotiations between the Applicant and Blyth & Co., in regard to the

(Testimony of Allen L. Chickering.)

issues headed up by Blyth & Co. in 1939, were carried on? A. Right here in San Francisco.

Q. Who carried on those negotiations on behalf of the Applicant?

Mr. Black, I think. Incidentally, he always reported back to the Executive Committee, as he does on all these things. He keeps his Executive Committee thoroughly informed at all times. [763]

Q. Do you know why Dillon Read & Co., Morgan Stanley & Co., Kuhn Loeb & Co., did not participate in the syndicates which bought the $30,000,000 and $35,000,000 issues of Applicant's bonds in May and October of 1936?

A. Well, the only reason I know is the one that I have given to you, which is purely hearsay: That the $90,000,000 issue was regarded as so large that they needed outside assistance.

By the way, Kuhn Loeb was not in that, was it?

Q. Yes, I think so.

Mr. Phleger: Yes; they were in on that $90,000,000 issue.

The Examiner: Dillon Read & Co. and Kuhn Loeb & Co. for seven and a half million each; and Stanley Morgan for ten million.

The Witness: The understanding I had was that they were only in that one issue, on account of its great size; but the other issues being smaller we didn't need any outside assistance. So they were not in those.

(Testimony of Allen L. Chickering.)

By Miss Calkin:

Q. Who would you say was responsible, if you know, for those three firms being included in the April 1936 syndicate?

A. Mr. Blyth was the head of the syndicate and I suppose you would say he was responsible. [764]

Q. The last substantial piece of financing of the Applicant was a $15,000,000 issue in February of 1938. A. Right.

Q. Which was privately placed. Who determined to privately sell that issue, rather than have it sold to the public?

A. Well, Mr. Black talked it over with the committee and said that Blyth & Co. thought that it could be privately placed. Incidentally, I have been mixed up in larger issues than that that have been privately placed. Where you have a small issue as that nowadays it is pretty good business to do it direct and save a lot of expense.

Q. Do you know whether or not North American played any part in the decision to privately place the $15,000,000 issue?

A. I never heard them mentioned in connection with it at all.

Q. Would you say that the North American Company has never played any part in shaping the financial policies of the Applicant?

A. Yes, I would.

Miss Calkin: That is all.

The Examiner: Any redirect?

(Testimony of Allen L. Chickering.)

Redirect Examination

By Mr. Phleger: [765]

Q. Mr. Chickering, in 1935 or 1936, did you speak to any other officers or directors of the Pacific Gas and Electric Company besides Mr. Black and Mr. Miller with respect to your view that it would be desirable for the company to do its financing with Blyth & Co. a western house?

A. Well, I am rather inclined to think that I expressed it in the meeting, in a meeting.

Q. Do *you what* the attitude of the other members of the Board of Directors, or the Executive Committee, were with respect to Blyth *was?*

A. It seems to me it was the Executive Committee, and it seems to me they were all favorable.

Mr. Phleger: That is all.

The Examiner: Anything further?

Miss Calkin: That is all.

The Examiner: You are excused, Mr. Chickering.

(Witness excused)

The Examiner: We will recess until 2:00 p. m.

(Whereupon, at 12:30 p. m. a recess was taken until 2:00 p. m. of the same day.) [766]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: I think you are next, aren't you, Mr. Beckett?

Mr. Phleger: Mr. Livermore, will you take the stand?

Mr. Livermore: Here?

The Examiner: Yes, sir, if you will, please. Raise your right hand.

Whereupon—

NORMAN B. LIVERMORE,

produced as a witness for and on behalf of the Applicant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Livermore, will you give your name and residence address for the record?

A. Norman B. Livermore; residence, Ross.

Q. How long have you been a resident of California, Mr. Livermore?

A. Ever since I was born.

Q. How long has your family before you lived here?

A. Well, my grandfather came in either '49 or '50, in the early 50's; my father came in '55.

Q. Your family has lived here ever since your father [767] came? A. Yes.

Q. What is your business or profession?

A. I am an engineer by profession, but mostly engaged in the commercial side of engineering for a good many years.

(Testimony of Norman B. Livermore.)

Q. What corporations are you affiliated with as a director or officer?

A. Well, I don't know as I can remember all of them, but I can remember the principal ones. The Pacific Gas and Electric Company, the Crocker Bank, the Fireman's Fund Indemnity, the California Packing, and several others, but they are minor corporations.

Q. Are you connected with the Coffin-Redington Company?

A. Yes, I am president of that company.

Q. These other corporations that you mentioned, do you hold any office other than director?

A. Well, I would have to think; no, mostly just director or on the committees.

Q. Have you any substantial financial interest in any corporation or enterprise whose main activity is not on the Pacific Coast? A. No, no.

Q. Would it be fair to say that almost all of your financial interests are in California enterprises? [768]

A. It is probably too true. I was talking with a financial man this morning and he said I was too much centered in California.

Q. What is the business of Coffin-Redington Company?

A. Wholesale drug distribution.

Q. Mr. Livermore, I show you applicant's exhibit 32, and directing your attention to a compilation statistically showing stock in the corporation

(Testimony of Norman B. Livermore.)

held by you and affiliates; by reference to it would you state the number of shares of stock of applicant which you, yourself, own?

A. Well, it's—the—my stock is in what is known as a personal holding corporation. I don't think there is any in my own name, but it's a personal holding corporation of which I own all the stock, and that corporation has 6,700 shares, that is, all belonging to the personal holding corporation, 6,700 shares at this time.

Q. Is that of preferred or common?

A. Common.

Q. And how many shares of preferred are owned by members of your family or other affiliated interests?

A. I should say about 3,000; I haven't footed them up, 3,000, I should say, various members of the family.

Q. So that you and various members of your family hold approximately 3,000 shares of preferred and 6,700 shares of common? A. Yes. [769]

Q. You have already testified that you are a director of the Crocker First National Bank of San Francisco. Will you state how many shares of stock of applicant is held by the Crocker First National Bank of San Francisco, in fiduciary or other capacities?

A. The first preferred, 61,000—I am taking it from this record which I think I have seen; I think this must be correct. It looks correct—61,383 preferred, and 20,659 common.

(Testimony of Norman B. Livermore.)

Q. Mr. Livermore, do you own any shares of stock of the North American Company?

A. No.

Q. Have you ever owned any shares of stock of that company? A. No.

Q. Do you own any shares of stock or securities of any affiliate or subsidiary company of the North American Company?

A. No. I—at least, I don't think so. I don't know what the affiliates are.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. Well, I first became a director of the corporation which preceded it. It was the California Gas & Electric Corporation. I can't remember how long ago—it was about 30, 35 years ago, I should say. [770]

Q. That was before the incorporation of the Pacific Gas and Electric Company? A. Yes.

Q. What connection, if any, did your family have with public utilities properties which later became and are now parts of the Pacific Gas and Electric system?

A. Well, my grandfather, I think, was the pioneer in water power in the state before transmission of the electricity was started. He headed the foundation of the Folsom dam in the early '60's and it was never completed at that time, but my father took it up in the '80's, and they completed the dam and put the first long distance transmission in of

(Testimony of Norman B. Livermore.)

any since, in California, or as a matter of fact, in the world, from Folsom to Sacramento. It was done under the name of the Folsom Water Power Company.

Q. When was that?

A. The transmission was completed, I think, in the early '90's. I can't remember the exact dates.

Q. Yes. Following that did your family and yourself become interested in other companies which have since become part of the Pacific Gas and Electric system?

A. Yes. The Folsom Water Power Company was, you might say, succeeded by the Sacramento Electric Light and Power Company, and they acquired the street railway system [771] and the gas company, and that was succeeded by the Sacramento Electric Gas and Railway Company, which went into the California Gas and Electric Corporation.

Q. And your family and yourself were interested in the Sacramento Electric—Gas and Electric Company, were they?

A. Yes; we have been interested ever since the Folsom Water Power right through.

Q. Yes; so that your family and you, as successor, have owned securities in their properties which later became part of the Pacific Gas and Electric Company since its organization, dating as far back as the early 1890's?

A. Well, it would be earlier than that, because the Folsom Water Power Company went 'way back to the '60's.

(Testimony of Norman B. Livermore.)

Q. Now, how early were you personally connected with any of the properties which are now part of the Pacific Gas and Electric system?

A. Well, I was—I used to do engineering work for the subsidiary companies. I have done it starting in in my college work, when I was in college, I used to do engineering work for the Folsom Water Power Company and I continued to do that for a good many years up to the time when the Sacramento Electric Gas and Railway Company was merged with the California Gas and Electric Corporation.

Q. Now, how long back was that first active partici- [772] pation by you?

A. Well, I was in the class of '94 in Berkeley, and I suppose it was about '90 when I first started going on surveys, and construction work in the summer.

Q. With the exception of the period of the World War, have you served continuously as a director of the Pacific Gas and Electric Company since soon after its incorporation?

A. Yes, continuously except when I was in the Army.

Q. How long have you known Mr. D. H. Foote?

A. Oh, I have known him ever since California Gas and Electric days. That's a great many years, must be. I can't tell you exactly, but it's many, many years.

Q. Almost 40 years, would you say?

(Testimony of Norman B. Livermore.)

A. Well, I should say so. Time goes by so fast.

Q. How long have you known Mr. C. O. G. Miller?

A. Oh, I have known Mr. C. O. G. Miller before I went to college even.

Q. How long have you known Mr. John D. McKee?

A. Oh, many, many years, but to the—almost as long as I have known Mr. Miller.

Q. How long have you known Mr. Allen Chickering?

A. Ever since we were boys together.

Q. How long have you known Mr. Downing?

A. Well, the first time I heard of him, met him, was in his football days, in college. I think that was in '97. [773]

Q. You did not play against him, by any chance?

A. No, I did not.

Q. How long have you known Mr. Coghlan?

A. Mr. Coghlan I have not known quite so long, but a great many years.

Q. How long have you known Mr. McIntosh?

A. Well, ever since he was paying teller in the old First National Bank, which must be about 40 years or more.

Q. How long have you known Mr. Wishon?

A. I first met Mr. Wishon when I made a report for the Sacramento Gas and Electric Railway Company of all the power plants in the state. My recollection is that I met him down in Fresno when he

(Testimony of Norman B. Livermore.)

was a young man at that time. I am not sure it was him or his brother, but I think it was he.

Q. That was a number of years ago?

A. That was back in the '90's I guess—somewhere along there.

Q. How long have you known Mr. Silas Palmer?

A. Oh, ever since we were boys together.

Q. How long have you known Mr. William W. Crocker?

A. Well, I have known him—he's younger than I am—but I have known him ever since he came back from college, and his father, I knew his father longer.

Q. You knew his father before him, did you not?

A. Yes. [774]

Q. For many years? A. Yes.

Q. How long have you known Mr. Henry D. Nichols?

A. Ever since we were boys together.

Q. Were you acquainted with Mr. Frank Dame during his lifetime?

A. I may have met him once but I am not sure.

Q. Were you acquainted with Mr. Edwin Gruhl during his lifetime? A. No.

Q. Are you acquainted with Mr. F. W. Doolittle?

A. No.

Q. Do you know Mr. Herbert B. Freeman?

A. I met him once.

Q. Are you acquainted with Mr. James F. Fogarty? A. I met him once.

(Testimony of Norman B. Livermore.)

Q. Have you ever communicated with any of the gentlemen I have just named by letter, telegraph, telephone, or otherwise? A. No.

Q. Have you ever discussed Pacific Gas and Electric Company affairs with any of the gentlemen whom I have just named? A. No.

Q. Were you acquainted with Mr. Guy C. Earl in his [775] lifetime? A. Yes.

Q. Did you ever discuss Pacific Gas and Electric affairs with Mr. Earl other than at meetings of the Board of Directors of the Pacific Gas and Electric Company?

A. No, never outside of meetings.

Q. Did Mr. Earl ever request you to vote in any particular way or take any particular action as a director of the Pacific Gas and Electric Company?

A. No.

Q. Do you recall the acquisition in 1930 by the Pacific Gas and Electric Company of the securities of Great Western Power Corporation of California and of San Joaquin Light and Power Company owned by the North American Company or its subsidiaries? A. Yes, I remember that.

Q. State what you know of the transaction.

A. Well, the things was very, very carefully studied by the executive committee and the officers of the company and they gave the results of their study and their recommendations, and my function was simply to vote as a member of the Board, either vote for or against their recommendations and they

(Testimony of Norman B. Livermore.)

had figures enough to make me feel that it was a proper thing to do.

Q. Do you know whether or not the question of the [776] acquisition of those properties from the North American Company had been a matter of discussion and consideration by the company for some considerable time before the action was consummated?

A. Not in the Board, may have been, probably was—I couldn't say how long it was discussed by the executive committee and the officers of the company.

Q. Do you recall in the previous years whether the question of the acquisition of the Great Western Power Company by Pacific Gas and Electric was under consideration?

A. I think it had been, but I have no very clear recollection. My recollection is that it had been suggested but it did not come to a head, at least not—may have been when I was away, but I have no clear recollection on that point.

Q. Do you recall whether Mr. Hockenbeamer made any statement to the Board of Directors in connection with this purchase relative to the position that the North American Company would occupy after it became a stockholder in Pacific Gas and Electric Company?

A. Why, my recollection is that he said that it was,—they were to simply act as an ordinary stockholder after the transaction had been completed,

(Testimony of Norman B. Livermore.)

there were no—it was just like any other transaction; the thing we were concerned with was whether the terms were satisfactory from our point of view.

[777]

Q. Was there any discussion in the Board at the time of the transaction as to whether or not after the transaction the North American Company would or would not attempt to influence or control the policies and management of Pacific Gas and Electric Company?

A. There was such a discussion at various times and we Californians, of course, didn't want to lose our identity and we were assured that such a thing would not happen.

Q. That assurance came from Mr. Hockenbeamer?

A. From the executive committee, and I was not on the Executive Committee at that time, so if they came into the Board and assured us—I spoke to Mr. Hockenbeamer once or twice about it and he assured me we would still have control of our California company.

Q. How long have you known Mr. James B. Black?

A. I have known him for a good many years. I can't say just how many. He was a young man, much younger than I, whose career we watched with a great deal of interest.

Q. Did you know Mr. Black when he was connected with the operations of the Great Western Power Corporation?

(Testimony of Norman B. Livermore.)

A. I knew him not intimately, but I did know him, yes.

Q. And did you know of his activities and accomplishments as an officer of the Great Western Power Company? A. Yes.

Q. During the period 1930-35, that is, between the time [778] that the Pacific Gas and Electric Company acquired the properties of North American Company and the time when Mr. Black became president of the Pacific Gas and Electric Company, did you see him frequently, or at all?

A. I am afraid my mind was wandering a little bit. Would you mind repeating that?

The Examiner: Read it, Mr. Reporter, please.

(Question referred to read by the reporter as above recorded.)

A. No. I—he called on me for a few minutes in San Francisco, and I returned his visit in New York, and I think that was the only times I saw him.

By Mr. Phleger:

Q. And during those two meetings did you discuss the affairs of Pacific Gas and Electric Company?

A. No. We discussed generalities. We didn't discuss the company at all.

Q. When did you become a member of the executive committee of the Pacific Gas and Electric Company?

A. Well, I can't remember exactly. It was several years ago. Time goes so fast again.

(Testimony of Norman B. Livermore.)

Q. Would December 18, 1935, appear about right to you? A. That is about right, yes.

Q. What do you know of the circumstances surrounding the election of Mr. Black as president of the company? [779]

A. Well, of course, we had a vacancy in the office of the president and it was very—at that time I was on the Board. I was not on the executive committee, but it was my duty to vote intelligently on a successor to Mr. Hockenbeamer, and there were certain discussions in regard to this subject in which I did not participate, but I won't—I was asked to go to a meeting in which I inferred it was going to be decided, and I said to myself as I went to the meeting, "If nobody else brings up Mr. Black's name I will bring it up." But I didn't bring it up because it was brought up by others.

Q. It is a fact that the name of Mr. Black as the candidate for president of the company occurred to you without being suggested by anyone else?

A. Yes, sir.

Q. Where was the meeting that you have just mentioned held?

A. It was either in Mr. Miller's office, or, as I remember it, Mr. Miller and Mr. Chickering asked me to come around, and I think it was in Mr. Miller's office, although I wouldn't be sure. I think that was it.

Q. That was just an informal meeting?

(Testimony of Norman B. Livermore.)

A. An informal meeting of the Board before the Board voted.

Q. Do you know who else besides Mr. Miller and Mr. [780] Chickering were present?

A. I don't think there was anybody present except those three of us. I am not quite sure. I couldn't say. I couldn't say, I am sure.

Q. Do you know who at that meeting first brought up the name of Mr. Black?

A. I think it was Mr. Miller, but I wouldn't be sure.

Q. I see.

A. Either Mr. Miller or Mr. Chickering.

Q. You give the substance of the conversation which took place at that meeting.

A. Well, the—they said they would ask me to come around before the meeting and discuss the matter of the new president and we—almost immediately Mr. Black's name was mentioned and I said, "Well, that's funny, because I am very glad of it because if you hadn't brought it up I would have. As long as you have brought it up it just suits me exactly." And we discussed his qualifications and the fact that he was a younger man, which was quite a point in his favor, and we all agreed. And that's all there was to it.

Q. Did Mr. Miller make any statement to you at that meeting with respect as to whether or not Mr. Black would sever all connections in the North American Company if he were elected president?

(Testimony of Norman B. Livermore.)

A. I don't think so because—well, I don't [781] remember any discussion. I think there was, and possibly that he would not accept the offer.

Q. So that you were talked to before Mr. Black had been spoken to about it? A. Yes.

Q. At a later date were you told anything with respect to Mr. Black's severing all connections with the North American Company when he assumed the presidency?

A. Yes. Well, at a later date I knew that he had accepted and that he was going to throw in his lot with the Pacific Gas and Electric.

Q. Have you always felt perfectly free as a director and as a member of the executive committee to express your views on any pending matter and to vote in accordance with your own conclusions?

A. Yes.

Q. Has any person during the period you have been a director and during the period that you have been a member of the executive committee dominated and controlled the actions of the Board of Directors or of the executive committee?

A. No.

Q. With the exception of the transaction in 1930 when the Pacific Gas and Electric Company acquired the stock of these companies from the North American Company, [782] have you ever heard the name of the North American Company mentioned in any meeting of the directors or the executive committee of the applicant?

(Testimony of Norman B. Livermore.)

A. No. I don't recall the mentioning of the name.

Q. Have you ever been told at any meeting of either the directors or the executive committee what the attitude of the North American Company was with respect to any pending matter?

A. It may have been mentioned that there was —it might have been mentioned the time when Mr. Black came out, and I think it was, that we could expect a perfectly free hand in advertising the company as owned and managed principally by Californians and we could expect a perfectly free hand in the future as we had in the past.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company was controlled directly or indirectly by the North American Company or that its management or policies were subject to a controlling influence directly or indirectly by the North American Company?

A. No, I have not.

Q. If the North American Company were to attempt to control or influence directly or indirectly, the management or policies of the Pacific Gas and Electric Company, would you oppose such attempt?

[783]

A. Yes, I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such an attempt?

(Testimony of Norman B. Livermore.)

A. I believe they would.

Q. In the event that the North American Company were to attempt such control or influence of the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I don't think they could control the company as against the California directors.

Q. If the North American Company were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholder's meeting and such an attempt were resisted by the management and directors of the Pacific Gas and Electric Company, do you think that the North American would be successful in its attempt?

A. I do not.

Q. Why?

A. I believe the California directors have sufficient connections and influence and acquaintanceship so that no eastern group could obtain a majority.

Mr. Phleger: That is all, Mr. Livermore.

Trial Examiner: Cross examination? [784]

Cross Examination

By Miss Calkin:

Q. Mr. Livermore, have you ever been associated with the Western Power Corporation or any of its subsidiaries?

A. No. I had a little stock in it once but I sold it.

(Testimony of Norman B. Livermore.)

Q. Do you know who controlled that company prior to—who had control of the Western Power Corporation prior to 1925? A. No, I don't.

Q. Was it reported to have been controlled by Western or Eastern interests, if you know?

A. I couldn't say.

Q. In your capacity as director of the applicant and member of its executive committee, what consideration do you give to the problems of the Vallejo Electric Light and Power Company?

A. Well, we feel that we ought to co-operate in every way that we can, and its been the policy throughout to co-operate insofar as we can, and try to work in a harmonious way with those developments.

Q. Who determines the policies of the Vallejo Electric Light and Power Company?

A. Oh, the Vallejo? Oh, yes. I thought you meant the Central Valleys. Vallejo is what you speak of?

Q. Yes. The Vallejo Electric Light and Power Company. [785]

A. Well, as far as I know, the majority interest determines tne policies.

Q. Well, as a director of the applicant do you have any part in the determination of the operating or financial policies of the Vallejo Electric Light and Power Company? A. No.

Q. Are those problems discussed at your Board meetings? A. Occasionally, yes.

(Testimony of Norman B. Livermore.)

Q. And in what connection?

A. Well, we just simply—the problems come up and such problems as the stockholder would have to consider, and they are discussed with the officers and executive committee. I don't recall them being discussed in the Board.

Q. Who in your opinion controlls the Vallejo Electric Light and Power Company?

A. Well, I don't know. I have heard his name but I can't recall it, some family, I think, controls it.

Q. Who carried on the negotiations between the applicant and the North American Company in 1930 which resulted in North American's acquisition of a large block of common stock of the applicant?

A. Well, I—the officers and the executive committee.

Q. Did you personally have any contacts with any of [786] the representatives of North American Company? A. No.

Q. In connection with that transaction?

A. No, none whatever.

Q. Well, who reported the progress of those negotiations to the Board?

A. The—when it first came to the Board it was—it had been going on for some time when the first report was made to the Board. The Board was not in very intimate touch with it; those matters were shaped by the executive committee and only came to the Board when they were very well along.

(Testimony of Norman B. Livermore.)

Q. Well, had the transaction practically been consummated at the time you first learned of it?

A. No. It was recommended by the executive committee and the officers and voted on by the Board.

Q. I think you were a member of the applicant's board when the Standard Gas and Electric Company acquired a large block of common stock in 1927, were you not? A. Yes—yes.

Q. Do you recall any assurances given by the Standard Gas and Electric Company at the time it acquired the common stock of the applicant regarding the extent of the participation of the Standard Gas and Electric Company and the affairs [787] of the applicant?

A. Well, the same statement was made that was subsequently made in the case of the North American Company, we would have nothing to do with the control of the company.

Q. Do you know whether or not the assurances given by Standard Gas and Electric Company were reduced to writing?

A. I don't know. No, I couldn't say.

Q. Well, what was your understanding of the assurances given by North American Company at the time it acquired a block of your securities?

A. It was my—my understanding was that it was only a general assurance that there was no intention of trying to displace the California management, and the California management felt that they could

(Testimony of Norman B. Livermore.)

maintain their position and, so far as I know, there was no contract or anything of that kind, but it was simply an assurance and a feeling on the part of the California directors that they certainly could maintain their position very readily.

Q. Do you know whether or not North American Company was requested to reduce those assurances to writing? A. I do not.

Q. Were you, as a member of the Board, apprehensive concerning any future attempt by North American to dominate applicant's affairs?

A. No, I was not. [788]

Q. You knew at that time, did you not, that the North American Company was one of the largest holding companies controlling several large utility properties?

A. Yes, we knew that, knew it was a large company.

Q. But you still thought that it was unnecessary to provide any safeguards against any future domination of the applicant by the North American Company?

A. Yes. We felt perfectly secure.

Q. Did Mr. Black make any representations to the applicant's Board in 1930 regarding the part North American would play if the deal were consummated in applicant's affairs?

A. Not that I ever heard.

Q. Was there any understanding at the time these securities were acquired as to what represen-

(Testimony of Norman B. Livermore.)

tation, if any, North American would have on the applicant's Board and executive committee?

A. I don't remember whether there was any definite understanding on that point or not. It was not —the point was not discussed with me.

Q. Do you recall whether or not North American shortly after the transaction was given representation on your Board?

A. Yes, there was representatives of the North American Company on the Board.

Q. What is the largest number of representations North American has had on your Board since 1930? [789]

A. I can't remember. They never used to come to the meetings so I couldn't say how many they had; two, I think, at least. But as they did not attend the meetings I couldn't say. I never charged my mind with it.

Q. Did you consider Mr. Earl a representative of the North American Company?

A. Well, I really didn't know exactly. I knew he represented some big eastern interest but I didn't —I didn't really pay much attention to it.

Q. Mr. Earl attended meetings of the Board with a fair degree of regularity, did he not?

A. Yes, yes, he did.

Q. So that if Mr. Earl were a representative of the North American Company from the time he became a member of the Board until his death it would be fair to say that North American had an

(Testimony of Norman B. Livermore.)

active representative on your Board, would it not?

A. I suppose so, if he was.

Q. Do you consider Mr. Black as a representative of the North American Company on applicant's Board at the present time?

A. No, I certainly do not.

Q. Has anyone ever indicated to you in any manner that North American did not deem its representation on applicant's Board as important during Mr. Black's presidency [790] as it was deemed during Mr. Hockenbeamer's presidency?

A. I never heard any discussion on that point at all.

Q. How are the proxies for the annual stockholders' meeting selected?

A. I really couldn't say. I have never been in on that.

Q. Do you know who makes up the slate of directors which is included in the proxies' statement circulated to the stockholders when their proxies are solicited?

A. No, I can't say that I do. There's been a great continuity in the Board and I suppose that is governed when the new directors have been elected, that is, when there might be a conference, but I think its mostly a matter of tenor—tenure.

Q. Do you know how the applicant is advised as to who the North American representative will be for the ensuing year prior to the annual stockholders' meeting? A. I do not.

(Testimony of Norman B. Livermore.)

Q. Does Mr. Black sometimes advise the Board as to North American's recommendations when he submits a particular matter to it for its consideration? A. No, he does not.

Q. Does he so advise the executive committee?

A. No.

Q. Has he ever done so? [791]

A. I don't recall any case in which he has.

Q. Since you have been a director of the applicant have you been advised from any source what North American's wishes were in respect to a particular matter?

A. No, I can't think I ever have—don't think I ever have.

Q. Have you, or has any other member of the Board in your presence ever asked Mr. Black what North American's views were on a particular problem?

A. I can't recall—recall anything, I can't recall any particular statement of that kind at all.

Q. What weight would you give to any suggestions which North American might make in view of the fact that that company is the largest stockholder of the applicant?

A. Well, they should have due weight that any stockholder or director should have, they should have that weight that—should be entitled to weight, of course, but they seem to have had confidence in local management, and, as far as I know they have just—the question has not come up.

(Testimony of Norman B. Livermore.)

Q. Did Mr. Hockenbeamer ever acquaint the Board with the recommendations which he received from the North American Company? A. No.

Q. Has there ever been any major difference of opinion between the Board and Mr. Black during Mr. Black's [792] presidency?

A. No. No, there's been no——

Q. Was there any such disagreement during Mr. Hockenbeamer's presidency?

A. There was a difference of opinion about the drop in the dividend. That is the only difference of opinion that I recall, when the dividend was lowered, there was a slight difference of opinion.

Q. How did that matter come to your attention?

A. Well, because I remember it was rather unusual. There was a slight difference of opinion as to whether we should cut the dividend or not and there was some indecision on the part of perhaps some members of the Board or some officers, and there was a matter of considerable discussion, and that's about the only thing of that kind that I remember. Generally the Board has been quite unanimous in their opinions, and, of course, that was also settled by vote.

Q. Were you advised of North American's attitude on the question of dividend reductions prior to the time the dividend was reduced?

A. No, I was not. I did not hear anything about that.

(Testimony of Norman B. Livermore.)

Q. Who later advised you as to North American's views on that subject?

A. I never heard their viewpoint at all. I never knew they had expressed it. [793]

Q. Did you have any communications with any representative of North American Company in regard to Mr. Black's presidency? A. No.

Q. Were any other persons considered for the position?

A. Yes, not very actively, as far as I was concerned, but there were other——

Q. Had Mr. Miller, do you know—scratch that. Do you know whether Mr. Miller had conferred with all the members of the Board prior to the time he communicated with Mr. Black regarding the presidency?

A. I really don't know. I imagine he had, perhaps he had, and my recollection now is that Mr. Elsey was in on that conference. Mr. Elsey—I had forgotten that—Mr. Elsey was in on that conference.

Q. The conference concerning which you testified on the subject of your direct examination?

A. Yes.

Q. Well, how long prior to the time that was communicated with Mr. Miller—with Mr. Black?

A. Yes, that was prior to the communication with Mr. Black. I am quite sure they might have felt him out. I don't think so. I think that was prior.

Q. Do you know who communicated with Mr. Black? [794] A. No, I don't.

(Testimony of Norman B. Livermore.)

Q. Was the possibility that Mr. Black, because of his prior association with North American might be influenced and dominated considerated by the directors present at the meeting which you testified about?

A. Yes, it was considered that—that he, if he came with us, he would be an independent man serving the Pacific Gas and Electric.

Q. And upon what did you rely to reach that conclusion?

A. Well, the—we felt that we were secure in our stock backing for one thing, and I suppose that —I couldn't say the assurance was given that such would be the case, but, of course, that came up on the negotiations, and I felt the—I relied principally upon the fact that we had very heavy support by the public here and we felt secure in our local backing.

Q. Well, did that satisfy you as an assurance that Mr. Black would not look to the North American Company for recommendations and advice if he should become president of the applicant?

A. Yes, it seemed sufficient to me after talking to the members of the executive committee.

Q. Do you know whether or not Mr. Black was requested to give any assurances in regard to that matter before he [795] was selected as president?

A. No, I don't. I couldn't say.

Q. Do you think it would be possible for North American to exercise very much influence or domi-

(Testimony of Norman B. Livermore.)

nation on applicant's policies, even though representatives of North American attended Board meetings or had contacts with Board members?

A. I don't think so. Of course, they might make all sorts of communications to him if they wished to; I don't think he would be influenced because the influence would certainly come out in the meetings if it existed.

Q. I believe you testified that you were acquainted with Mr. Freeman?

A. I just met him once.

Q. And where did you meet him?

A. He attended one meeting of the Board. I met him there.

Q. How frequently have you been in New York since 1930?

A. Oh, I used to go to New York every year. That was many years ago. The time I called on Mr. Black I think I have been there once since then.

Q. Have you only been in the offices of the North American Company in New York once, on one occasion? [796]

A. Yes, the time I called on Mr. Black was the only time I have been in their offices.

Q. And the only other time you have seen any representatives of the North American Company was when they have been in California?

A. At the Board meetings.

Q. Have any major changes occurred in the

(Testimony of Norman B. Livermore.)

operating and financial policies during Mr. Black's presidency?

A. Well, there's been an emphasis on lower rates is the principal thing. Since Mr. Black came he cut rates perhaps a little more freely than the previous management did, done a lot of financing and cutting rates.

Q. Are you familiar with the reports sent by applicant to the North American Company?

A. No, I know nothing about them.

Q. And you don't know what use North American makes of any reports which it might receive from applicant? A. No.

Q. Do you know whether the North American Company has played any part in the formation of applicant's policies in regard to the Hetch Hetchy situation?

A. I don't think so. I never heard it mentioned or no indication of it at all—I don't believe so. That is such a local matter that they couldn't possibly participate in [797] that.

Q. Am I correct in my understanding that you did not know that North American objected to the reduction of dividends on the common stock in 1933? A. No, I didn't know it.

Q. The dividends were increased in 1936, I believe the evidence shows, or restored to their former 8 per cent rate. Was anything said at the meeting at which those dividends were discussed, concerning North American's attitude on the dividends?

(Testimony of Norman B. Livermore.)

A. No. No, I think I would remember that. I am quite sure it was not. I think some of the California directors were absent at the meeting when the dividend was cut, otherwise the dividend wouldn't have been cut.

Q. Were you in favor of the reduction in 1933?

A. It was a little bit—I was against it myself. I think one of our absent California members was against it; if he had been there it wouldn't have been reduced.

Q. Was that Mr. Miller?

A. Yes. I say that—that is not positive; that is just my impression.

Q. Were you in favor of the increase?

A. Yes, I was in favor on the whole of maintaining the dividend. I wanted it—— [798]

Q. Is the increase of dividends usually recommended by the president of the company?

A. That is a matter for the executive committee, first, and the Board; that is not so much a matter for the—of course, his word would be given a great deal of weight. That is a matter that everybody has to get in that is on the Board or on the executive committee.

Q. Now, you have been a director of the applicant since its inception. Can you tell me how N. W. Halsey & Company got the leadership of applicant's early financing?

A. No, I can't. I guess they were, of course, mixed up in a lot of things out here. My recollec-

(Testimony of Norman B. Livermore.)

tion is not very good on that. They were strongly identified with early water power financing when it was in its infancy here, when it was awful hard to finance anything in that line, and I suppose it gave them a little prestige for a while—I couldn't answer that very intelligently. I was——

Q. What do you know about National City Company underwriting a number of applicant's issues from about 1921 to 1931?

A. Well, I practically know nothing, nothing about that.

Q. Are you acquainted with any of the representatives—I mean were you acquainted with any of the representatives of National City Company during that period?

A. No, just a bowing acquaintance, practically.

[799]

Q. Who handled the applicant's financing from 1921 to 1931?

A. Couldn't—I couldn't say. I couldn't recall by dates.

Q. Well, who in the company representing the applicant had charge of such matters?

A. Well, Mr. Hockenbeamer was the man who handled all the financing. There was a period when we financed by preferred stock almost exclusively and that was his idea. It was a pioneer thing in that line and he financed—at the depth of the depression we financed by preferred stock sold over the counter.

(Testimony of Norman B. Livermore.)

Q. In 1930 and 1931, the evidence shows the applicant issued $25,000,000.00, two $25,000,000.00 bond issues. Do you know who determined the amount of those issues?

A. Was that during Mr. Hockenbeamer's presidency?

Q. Yes, I believe he became president in 1927.

A. Well, if he was, if it was while he was president and even before he used to be he was the main guiding spirit in those matters.

Q. Do you recall the circumstances surrounding the matter of the 1935, forty five million dollar issue of applicant's bonds?

A. I can't identify them by dates. I don't identify [800] those issues by dates.

Q. I think that was the first piece of financing under the Securities Act of 1933.

A. Oh, I——

Q. And one of the first large pieces of financing done in the country.

A. Oh, yes; I recall that matter, yes.

Q. Do you recall any discussions which took place at the Board meetings regarding who should head the underwriting syndicate which purchased that forty five million dollar issue?

A. No, there was no discussion at the Board meeting. As I remember, there was some discussion that we heard about at the—in the offices and executive committee, but I think there was no discussion as to who should be the head underwriter;

(Testimony of Norman B. Livermore.)

there was some discussion as to whether we should refinance at all, there was considerable discusion over that ubject.

Q. The evidence shows that a banking house by the name of Lazard Freres headed the syndicate to purchase the forty five million dollar issue of 1935. What do you know about how Lazard Freres come to get that business?

A. Well, I think Mr. Hockenbeamer was responsible for that. He felt that the financing would be most successful [801] under their auspices, and I think his recommendation was paramount in that matter, as far as I know, although I wasn't on the executive committee so it would only come up to the Board as an almost accomplished thing or almost ready to put through.

Q. Do you know whether or not North American participated in the selection of Lazard Freres as syndicate manager of that issue?

A. I never heard anything about that at all.

Q. You don't know with whom, if anyone, Mr. Hockenbeamer consulted in the selection of Lazard Freres? A. No, I do not.

Q. Do you know Mr. Charlie Blyth?

A. Yes.

Q. How long have you known him?

A. Oh, I have known him slightly for a long time.

Q. Are you acquainted with the company with which he is associated, Blyth & Company?

(Testimony of Norman B. Livermore.)

A. Yes. I think of the company as him. I don't know much about the company.

Q. Do you consider Blyth & Company a California underwriting house?

A. Yes, they have New York connections, of course, but they have been identified in California principally and we have so considered them, I have always considered them such. [802]

Q. During 1935 did you participate in any discussion, or were you active in the efforts of Blyth & Company, in attempting to get the leadership of applicant's financing?

A. I didn't hear any of that; I didn't hear anything about that.

Q. Did any representative of Blyth & Company ever approach you in 1935 or 1936 in an effort to get applicant's business for Blyth & Company?

A. No, I was not approached by them. I was approached by two or three houses after the underwriting was set, they wanted to participate in it, but after the terms were set and the syndicate managers were selected Blyth never approached me at all.

Q. The people who approached you merely wanted to participate——

A. (Interposing) Participate in something that was set up already.

Q. Was that headed by Blyth & Company or Lazard Freres & Company?

(Testimony of Norman B. Livermore.)

A. I couldn't remember some of the—it might have been either—they spoke to me about it.

Q. The first piece of financing after Mr. Black became president of the applicant was a ninety million dollar issue sold in March, 1936, to a syndicate headed by Blyth & [803] Company. What do you know about the reasons why Blyth & Company succeeded Lazard Freres as the syndicate manager of that—of applicant's financing?

A. Well, we—it was considered that Blyth was a California organization primarily, which was a thing in their favor, and it was considered that the results of the financing would be more satisfactory under their leadership and that was as far as my vote went; that was paramount in the situation.

Q. Was consideration given Blyth & Company as syndicate manager by the Board of which you were a member? A. Yes.

Q. Who would you say was responsible for Blyth & Company getting the leadership as manager of the 1936 syndicate issue?

A. I don't know as anyone was responsible, it was a matter of discussion among those in the executive committee who had a great deal to do with such issues, and I presume they discussed it. It was perhaps a joint conclusion. That would be my general impression.

Q. Were all the members of the executive committee of the opinion that Blyth & Company should have the business rather than Lazard Freres & Company? A. Yes, I think it was unanimous.

(Testimony of Norman B. Livermore.)

Q. The evidence shows that Dillon Read & Co.—and Company, had a substantial participation in the March, 1939, [804] issue. Do you know how that firm got a membership in that syndicate?

A. No, I don't. I didn't know they had a participation.

Q. Did you, or to your knowledge, did any member of the executive committee in 1936 confer with any representatives of the North American Company regarding the syndicate manager?

A. As far as I know, no; I certainly did not.

Q. Do you know whether North American Company had anything to do with Dillon Read's getting a substantial participation in the March, 1936, issue?

A. I couldn't say.

Q. In your opinion is Mr. Black more amenable to suggestion from members of the executive board than Mr. Hockenbeamer was?

A. I wouldn't say that, I would say that both were amenable. I never made such a comparison.

Q. Do you know why Dillon Read & Company did not participate in the May and October, 1936, financings of the applicant?

A. No, I don't—I don't know.

Q. What part, if any, has North American Company played in the formation of the financial policies of the [805] applicant?

A. As far as I know, no part at all, that I have heard of.

Miss Calkin: I think that is all.

(Testimony of Norman B. Livermore.)

The Examiner: Any further questions, Mr. Phleger?

Mr. Phleger: Yes, just two questions.

Redirect Examination

By Mr. Phleger:

Q. Mr. Livermore, would you give any greater weight to the views of North American Company as a stockholder than to the views of any other substantial stockholder?

A. No, I think I—of course, there are certain members on the Board that have a certain number of votes, they are entitled to vote, that's all.

Q. You testified that you had met Mr. Freeman once. The record shows that Mr. Freeman has never been in the state of California.

A. Then I am mistaken. I thought I met him at the Board.

Q. You confused him with Mr. Doolittle, perhaps, who attended one meeting.

A. Well, I don't remember Mr. Doolittle at all, and I thought I remembered Mr. Freeman. I still think he was at one meeting, if it was just one meeting. I remember how he looks. [806]

Miss Calkin: Did Mr. Black introduce you to any members of North American Company when you called on him in New York?

The Witness: No, no—I just had a little chat with him in his own office.

Miss Calkin: That is all.

(Testimony of Norman B. Livermore.)

Mr. Phleger: No further questions.

The Examiner: You may be excused, Mr. Livermore. Thank you very much.

(Witness excused)

The Examiner: Have you another witness now, Mr. Phleger? Or do you want to have Mr. Beckett return?

Mr. Phleger: I suggest we have a recess now for a little while.

The Examiner: Yes, we will have a short recess now at this time.

(Whereupon a brief recess was taken, after which proceedings were resumed as follows:)

The Examiner: Are you ready now for Mr. Beckett? Or do you have another witness?

Mr. Phleger: No, no; Mr. Beckett.

The Examiner: You have completed your direct examination?

Mr. Phleger: Yes, but I would like to resume it to ask one or two more questions.

The Examiner: All right. You have already been sworn, Mr. Beckett. You may resume the witness chair. [807]

Mr. Beckett: Yes.

E. J. BECKETT,

produced as a witness for and on behalf of the Applicant, having been previously duly sworn, testified further as follows:

Direct Examination
(Resumed)

By Mr. Phleger:

Q. Mr. Beckett, in your previous testimony you identified certain statements which you said that under the direction of Mr. Black you forwarded to Mr. Freeman of the North American Company?

A. Yes.

Q. Since you left the stand you have called my attention to an additional form which I will offer in evidence as applicant's exhibit next in order, which is headed "Statistical statements, October, 1940, prepared by department of vice-president and executive engineer, Pacific Gas and Electric Company."

The Examiner: That will be received, in the absence of an objection, as applicant's Exhibit 45.

(The form referred to above was marked Applicant's Exhibit No. 45, and was received in evidence.)

By Mr. Phleger:

Q. I show you Exhibit 45 and ask you if you will [808] explain what it consists of.

A. This statement contains a summary showing the customers served by the company as of the end

(Testimony of E. J. Beckett.)

of the month, and the gain in customers by geographical divisions of the company.

It also shows the kilowatt hours sold to the company's customers in each of its major divisions; shows the revenues of the electric and gas departments, divided by major revenue accounts, and the kilowatt hour sales classified by major revenue accounts; also similar information with respect to the gas department.

Q. Now, has this form of statistical statement been made up for many years?

A. It has, yes.

Q. It's made up monthly?

A. Made up monthly.

Q. Are a number of copies of it made and sent out to different departments of the company?

A. Yes.

Q. Does it contain any other information other than is contained in other statements, submitted by the president to the Board of Directors and executive committee?

A. No, excepting that possibly there is a trifle greater or more detailed segregation of major revenue accounts. I am not entirely clear on that. There used to be a somewhat [809] larger detail than is contained in some of these other statements which are furnished regularly with the income statements.

Q. This report is made up, is it not, in the office of vice-president and general manager?

(Testimony of E. J. Beckett.)

A. In the office of vice-president and executive engineer.

Q. And executive engineer? Copies of it are sent throughout the system, are they not?

A. They are, to the various divisions, and to the sales representatives.

Q. And you monthly forward a copy of this regular company statistical report on to Mr. Freeman, do you? A. That is right.

The Examiner: Do I understand this report is somewhat lacking in detail in respect to the distribution than the regular financial data?

A. I am not quite sure at the present time, Mr. Examiner, if such is a fact; at one time it was a fact, it was intended primarily for the information of division managers so that they could tell how their divisions were coming along. Most of that data, and I think possibly most all of it, is principally incorporated in the income statements which are submitted to the executive committee and [810] Board of Directors.

Q. If there is any greater detail in here it is primarily because of the fact it was for the use of the president to take in to the executive meetings?

A. That is correct. And I think the reports are identical.

By Mr. Phleger:

Q. Mr. Beckett, do you know whether the president takes that statement into meetings of the executive committee and the Board of Directors

(Testimony of E. J. Beckett.)

from which it gets certain information off the reports?

A. The first two pages generally are of statistics which are submitted by the president in his reports to the executive committee, that is, the statement of customers; those two pages constitute the consumers' statement. The remaining pages are not because of the duplication of information contained in the reports already submitted to the committee.

Q. As a matter of fact, he physically takes a copy of that report in with him, does he not?

A. Yes.

Q. And reads from the first two pages?

A. Why, I imagine he comments on it. I am not present at the meetings, of course, and I don't know what [811] he does.

Mr. Phleger: That is all.

The Examiner: Cross examine, Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. Beckett, I believe you testified that in connection with your duties you assisted in the preparation of the annual stockholders' report?

A. Yes.

Q. By whom is the first draft of that report prepared? A. By me.

Q. And what do you do with it?

A. After it is drafted I submit it to Mr. Black for his approval and suggestions, changes.

(Testimony of E. J. Beckett.)

Q. You get the information which is incorporated in that report in other departments of the applicant? A. That is right.

Q. Do you send a copy of the draft of the stockholders' report to the North American Company?

A. No.

Q. Do you know whether or not Mr. Black does?

A. No, he does not.

Q. In what form is the annual stockholders' report when it is sent to the North American Company? [812]

A. In the same form in which it is submitted to all stockholders and they get it at the same time. In other words, the North American Company is on our mailing list the same as any other stockholder to receive annual statements or interim earning statements such as are furnished to the various stockholders, and we do not, to my knowledge, even send them a special copy from our office. They are simply on the regular mailing list.

Q. In other words, they receive the final draft after it's printed and in final form?

A. That is right.

Q. And approved by the Board of Directors?

A. That is right. [813]

Q. What reports, if any, do you send regularly or irregularly to the North American Company which are not submitted to the Board of Directors or to the Executive Committee?

(Testimony of E. J. Beckett.)

A. The only reports, I think, are those that I referred to this morning; the statistical report, which is furnished by all member utilities to the Edison Electrical Institute, a copy of that monthly statement is furnished to the North American Company.

Q. You have examined Applicant's Exhibit No. 33, have you not?

A. I don't know it by number. I looked at the summary page this morning.

Q. Will you look at it again and tell me if Applicant's Exhibit No. 33, together with Applicant's Exhibit No. 45, includes sample copies of the reports sent by the Applicant to North American Company of which you have knowledge?

A. That list appears to me to be complete.

Q. Do you have any information as to the amount of intangibles included in the utility plant account of the Applicant?

A. No. I have really nothing to do with that.

Q. Would that be under Mr. Hodges' jurisdiction? A. Yes.

Q. Is Applicant's Exhibit No. 45 prepared primarily for use by the different departments and divisions of the [814] Applicant?

A. That was the primary purpose of its compilation, yes. It was prepared, as I recall it, long before the North American acquired any stock interest in this company.

Q. How did you happen to start sending a copy

(Testimony of E. J. Beckett.)

of Exhibit No. 45 to the North American Company?

A. I think that originally Mr. Hockenbeamer had me send this statement, as Exhibit No. 45, monthly with the income statements of the company to Mr. Black before Mr. Black became president of the company, and I continued that practice after Mr. Black became president by sending them to Mr. Freeman.

Q. What reports, if any, are now being furnished to the North American Company which were not furnished to it during Mr. Hockenbeamer's presidency? A. None to my knowledge.

Miss Calkin: Mark these (indicating) in the order in which they are arranged for identification.

(The photostatic copies of letters referred to were marked Commission's Exhibit No. 19 to 28 inclusive for identification.)

By Miss Calkin:

Q. Mr. Beckett, I hand you what has been marked for purposes of identification as Commission's Exhibits Nos. 19 to 28 inclusive and I will ask you if you can [815] identify those documents?

A. Do you wish me to read them off or merely identify them as a group?

Q. As a group. Are those documents copies of correspondence carried on between you and Mr. Freeman of the North American Company?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 19 to 28 inclusive.

(Testimony of E. J. Beckett.)

Mr. Phleger: No objection.

The Examiner: Without objection they will be received in evidence.

Commission's Exhibit No. 19 is a letter dated December 7, 1937, signed by Herbert C. Freeman, on the letterhead of the North American Company, directed to Mr. Beckett, Assistant Treasurer of the Pacific Gas and Electric Company.

Commission's Exhibit No. 20 is a copy of a two-page letter dated December 20, 1937, without a signature, bearing the initials "EJB," directed to Mr. H. C. Freeman, Vice-President of the North American Company.

Commission's Exhibit No. 21, a letter dated December 27, 1937, on the letterhead of the North American Company, to Mr. Beckett from Herbert C. Freeman.

Commission's Exhibit No. 22, a copy of a letter of December 30, 1937, without signature, apparently from the [816] assistant treasurer, with the initials "EJB," to Mr. H. C. Freeman, vice-president of the North American Company.

Commission's Exhibit No. 23, a letter of January 4, 1938, on the letterhead of the North American Company, to E. J. Beckett from Herbert C. Freeman.

As Commission's Exhibit No. 24, a copy of a letter on the letterhead of the Pacific Gas and Electric Company, dated May 18, 1938, from E. J. Beckett, assistant treasurer, to Mr. H. C. Freeman.

(Testimony of E. J. Beckett.)

As Commission's Exhibit No. 25, a letter of October 7, 1938, from E. J. Beckett, assistant treasurer, to Mr. H. C. Freeman. As Commission's Exhibit No. 26, a copy of a letter signed by H. C. Freeman, vice-president, dated November 12, 1938, to E. J. Beckett, assistant treasurer, Pacific Gas and Electric Company.

As Commission's Exhibit No. 27, on the letterhead of the Pacific Gas and Electric Company, a letter of September 1, 1939 to Mr. H. C. Freeman from E. J. Beckett.

As Commission's Exhibit No. 28, a letter on the letterhead of the Pacific Gas and Electric Company, dated September 15, 1939, to Mr. H. C. Freeman from E. J. Beckett, assistant treasurer.

(The photostatic copies of letters referred to were marked Commission's Exhibits Nos. 19 to 28 inclusive and were received in evidence.)

[817]

By Miss Calkin:

Q. Mr. Beckett, do you frequently receive letters from Mr. Freeman regarding the reports which you submit to him?

A. Not very frequently; no. I do occasionally.

Q. Can you describe generally the nature of the communications from Mr. Freeman to you regarding such reports?

A. They are so infrequent that it is hard to generalize on them. I would say that these exhibits here are typical of inquiries that I might get or the letters that I might get from him.

(Testimony of E. J. Beckett.)

As a matter of fact, outside of purely routine letters of transmittal from my office there is very little correspondence between me and Mr. Freeman.

Q. Does Mr. Freeman, in corresponding with you, generally ask an explanation of some matter included in the reports?

A. That would be the general purpose of his letters on the few occasions that he writes; yes.

Q. Have you ever met Mr. Freeman?

A. Yes.

Q. I believe you testified to that on your direct examination.

A. No, I don't think I was asked.

Q. How frequently have you seen Mr. Freeman?

[818]

A. I met him in New York, on one occasion.

Q. Have you ever talked to Mr. Freeman over the telephone? A. No.

Q. Have you ever sought the advice of the North American Company in connection with any of your duties relating to the Applicant? A. No.

Q. Have you ever received such advice from the North American Company? A. No.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Beckett, is it fair to state that outside of the letters accompanying the various documents which you have sent from time to time to Mr. Free-

(Testimony of E. J. Beckett.)

man, and as to which you have just testified, that these exhibits, Commission's Exhibits 19 to 28, inclusive, include substantially all of the correspondence you have had with him?

A. I believe that is true.

Q. That is to say, 4 letters, 2 from you and 2 to you in December 1937, one to you in January 1938, one from you in May 1938, one from you in October 1938, one to you in November 1938, and 2 from you in September 1939, is that [819] correct?

A. I think that covers all of them.

Mr. Phleger: That is all.

The Examiner: Any further questions, Miss Calkin?

Recross Examination

By Miss Calkin:

Q. You don't mean, Mr. Beckett, that during the past ten years that the letters introduced in evidence as Commission's Exhibit 19 to 28, inclusive, are all of the correspondence that you have had with the North American people, do you?

A. I think that they constitute all of the letters beyond, as I have stated, purely routine letters of transmittal in which I may have perhaps explained certain things in connection with our income statements possibly, or in connection with the new classification of accounts, things of that type; or rate changes, transmitting changed gas and electric rate schedules I might have generalized on what they included.

(Testimony of E. J. Beckett.)

Q. You have written North American some sort of a letter every time you have sent them a report, have you not? A. That is true.

Mr. Phleger: He testified routine letters of transmittal are excluded in the statement, as I understood it. [820]

By Miss Calkin:

Q. Haven't there been occasions when you have explained the matters contained in certain reports by correspondence with Mr. Freeman other than the letters represented by the documents introduced in evidence?

The Examiner: And such routine letters as you testified to?

The Witness: I can't reply directly to that. If they ask any questions I would reply to them naturally. As I say, sometimes I explain things without any specific request from them.

By Miss Calkin:

Q. In other words, you wouldn't say that those letters which have been introduced as Commission's Exhibit 19 to 28 inclusive constituted all of the correspondence between yourself and Mr. Freeman since 1930?

Mr. Phleger: Other than routine letters.

A. Other than routine letters, just such as I have described, I think they do. I haven't gone through our files since 1930 to see if I had any further correspondence with Mr. Freeman. I haven't checked, but I have no knowledge of anything be-

(Testimony of E. J. Beckett.)

yond, as I have stated, routine letters of transmittal, or explanations of matters connected with the material when transmitted.

Miss Calkin: I think that is all. [821]

Mr. Phleger: That is all.

The Examiner: You may be excused.

(Witness excused)

Mr. Phleger: Mr. Coghlan.

Whereupon—

JOHN P. COGHLAN

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

The Examiner: Will you give the reporter your full name?

The Witness: John P. Coghlan—C-o-g-h-l-a-n—2813 Scott Street, San Francisco.

Direct Examination

By Mr. Phleger:

Q. Mr. Coghlan, will you give your name for the record?

The Examiner: He has already given his name and address.

By Mr. Phleger:

Q. How long have you lived in California?

(Testimony of John P. Coghlan.)

A. I was born in California, born in Nevada County, and came to San Francisco when I was 14 years of age.

Q. When did you enter the employ of the Pacific Gas and Electric Company? [822]

A. In March 1906; I think it was March 1, 1906.

Q. Before you became connected with the company what was your occupation?

A. Well, I came to San Francisco when I was 14 years of age and I went to work in a newspaper office as office boy; later became a newspaper reporter; still later a reporter of the courts and city departments for the newspaper; and while there I studied law and was admitted to the bar. I practiced for a short time with Mr. Charles A. Lee, now deceased, and in 1904 I was appointed Assistant City Attorney under Percy B. Long, then City Attorney.

I served two years in the City Attorney's office, and then was associated for a short time with Mr. Long and Mr. John S. Partridge, now deceased, and who was later a Federal District Judge.

I left that last association to join the Pacific Gas and Electric Company as a junior attorney in the law department, having charge of claims and damage matters.

Q. State what various positions you have held with the company since you entered its employ in 1906?

A. I was for a number of years in charge of

(Testimony of John P. Coghlan.)

claims and damages, and in charge of matters before the Industrial Accident Commission, and in charge of safety matters.

I organized the safety organization, which is still in effect in the company. [823]

In 1923, upon the death of Mr. John A. Britton, there was some reorganization within the company and Mr. W. E. Creed, then president, made me his assistant, with the title of Assistant to the President.

When Mr. Creed died in 1927 Mr. Hockenbeamer, who was then secretary and vice-president and treasurer, was made president and I was made second vice-president with the title of Second Vice-President and Assistant to the President.

The duties of the treasurer were transferred to Mr. Foote, Third Vice-President.

Q. What are your duties in your present position?

A. I have largely to do with taxes and employee relations, publicity, public relations and contracts with governmental departments.

Q. During your service with the company have you acted as an officer of the court in connection with any receivership matters?

A. In 1914 I was appointed by the Federal District Court receiver of the property of the North Electric Company. That was a railway operating between Sacramento and various points, cities and towns in the Sacramento Valley, with properties

(Testimony of John P. Coghlan.)

valued at about $10,000,000, and an annual income of about $1,125,000, and with about 600 employees.

I managed that property as receiver for four years, [824] turning the property over in 1918 to a re-organization company, which later transferred the property to the Western Pacific Railway.

Q. Have you had anything to do with the formulation of the company's pension plan?

A. Yes; in 1921 I was chairman of the committee that revised the then voluntary pension plan of the company and in 1936 I was chairman of the committee that redrafted the pension plan and established the contributory retirement plan which is now in effect.

Q. When were you first elected a director of the company?

A. I was elected a director April 8, 1930, on recommendation of Mr. Hockenbeamer.

Q. How long did you continue?

A. I served until June 18, 1930, as I remember, when I resigned at the suggestion of Mr. Hockenbeamer because at that time 3 directors were about to be elected as a result of the acquisition of the Great Western and San Joaquin properties by the Pacific Gas and Electric Company.

Q. When were you again elected as a director?

A. I was re-elected a director on August 26, 1931 to succeed Charles H. Dickey, deceased, and I have been a director ever since.

Q. Are you a director of any subsidiary company— [825] strike that.

(Testimony of John P. Coghlan.)

Are you a director of any companies in which the applicant owns stock?

A. I am a director of the Vallejo Electric Light & Power Company, in which the Pacific Gas and Electric Company is a stockholder, a minority stockholder.

Q. Are you a director of any other companies in which the Applicant owns stock?

A. I am a director in the Arlington Properties Company, which is a company that holds non-operating real estate for the Pacific Gas and Electric Company.

Q. Do you own any stock in the Applicant?

A. Yes. Either alone, or in joint tenancy with my wife, I own 1350 shares of preferred stock and 1480 shares of common. With other members of my family I think I own 3240 shares of stock. Including the stock I have referred to myself and family, members of my family, own 3240 shares of stock.

Q. Have you owned stock of the company for a considerable period?

A. I made my first purchase of stock in 1906 as I recall it.

Q. You have been a stockholder ever since?

A. Yes.

Q. Do you own any stock in the North American Company? [826] A. No, I do not.

Q. Have you ever owned any stock in it?

A. No, I have not.

Q. Do you own any stock or securities in any

(Testimony of John P. Coghlan.)

affiliated or subsidiary company of the North American Company?

A. I do not, and never have.

Q. Have you attended meetings of the Board of Directors regularly since your election?

A. Yes, I have.

Q. Do you also attend meetings of the Executive Committee of the Company?

A. Yes; as one of the officers invited to sit with the Executive Committee, I do.

Q. Do you freely speak at both meetings of the Executive Committee and at the Board of Directors on matters on which you have an opinion?

A. I do.

Q. In your opinion does any director of the company dominate the meetings of either the Board of Directors or of the Executive Committee?

A. I should say not.

Q. In your opinion do the members of those two bodies freely and fully discuss all matters coming before them? [827]

A. They do. That is particularly true in the Executive Committee where matters are discussed at considerable length.

Q. Were you acquainted with Frank Dame during his lifetime?

A. Casually. I first met him at a convention of the National Electric Light Association late, in the late twenties.

(Testimony of John P. Coghlan.)

Q. Were you acquainted with Mr. Edwin Gruhl during his lifetime?

A. In about the same way and to the same extent.

Q. Were you acquainted with Mr. F. W. Doolittle?

A. I know Mr. Doolittle. I met him several times.

Q. Do you know Mr. James F. Fogarty?

A. Yes. I know him, met him several times.

Q. Have you ever met Mr. Freeman?

A. I don't recall ever having met Mr. Freeman.

Q. Did you ever discuss with any of the gentlemen that I have just named the affairs of the Pacific Gas and Electric Company?

A. Only in a general way. I never discussed any business matters with them for purposes of decision or anything of that sort.

Q. Have any of these men just named ever made any suggestions to you as to your action as an officer or a [828] director of the Applicant?

A. None of them ever have done so.

Q. Have you ever had any communications with these gentlemen by telephone, mail or otherwise, with respect to Pacific Gas and Electric Company affairs?

A. I have had some casual correspondence with Mr. Fogarty and with Mr. Doolittle, but about annual reports and pamphlets and addresses that were sent to me.

(Testimony of John P. Coghlan.)

Q. How long have you known Mr. Black?

A. At least 20 years.

Q. Did you know him when he was connected with the Great Western Power Company in an executive capacity?

A. Yes. When I first knew him he was Sales Manager of the Great Western Power Company, and then I knew him later as General Manager and Vice-President of the Great Western Power Company.

Q. During the period between 1930 and 1935, when Mr. Black was in New York, did you see him?

A. Yes, I saw him a few times. I should say I was in New York in that period two or three times making visits either on vacation or to the convention of the National Electric Light Association.

Q. Did you see him also when he came to San Francisco on his annual or semi-annual visits? [829]

A. I recall seeing him about the time the negotiations were under way for the acquisitions of the Great Western and San Joaquin properties. I don't recall seeing him at other times, though I probably did see him.

Q. Have you ever discussed with Mr. Black, prior to his becoming president of the company, affairs of the Pacific Gas and Electric Company other than in a rather perfunctory way?

A. Only in a general way. Mr. Black asked for information about matters that were pending, and

(Testimony of John P. Coghlan.)

sometimes asked questions about the Hetch Hetchy situation, matters of that kind, generally asking for information.

Q. Prior to 1935, when Mr. Black became president, did he ever communicate to you the views of the North American Company with respect to pending matters with the suggestion as to what their attitude was?

A. No; he never did, and never made any suggestion on behalf of the North American Company to me.

Q. Were you acquainted with Mr. Guy C. Earl during his lifetime?

A. Yes; I knew Mr. Earl for many years.

Q. Did you ever discuss Pacific Gas and Electric Company matters with him, other than in directors' meetings?

A. In meetings of the Executive Committee and once in a while he would drop into my office and ask questions [830] about matters that were pending.

Q. Did he ever attempt to influence your action as an officer or director of the company?

A. No, he never did, except once in connection with the dividends that have been mentioned here. He spoke to me about that.

Q. State, if you will, your recollection of the action of the directors in 1933 when the dividend was reduced from 8 per cent per annum to 6 per cent?

(Testimony of John P. Coghlan.)

A. I was present at the meeting of the Board of Directors at which that matter came up. As I recall the incident, Mr. Hockenbeamer discussed the earnings and the earning statement and generally reviewed the dividend situation, and recommended that the dividend be declared in the usual amount of 50 cents.

Mr. Anderson raised a question about that and said that he had discussed the matters, as I recollect, with Mr. Hockenbeamer, and Mr. Hockenbeamer had a different opinion either earlier in the day or a few days before, and Mr. Hockenbeamer said that he had had a different opinion but that he believed the dividend could be declared at that time and that possibly we could consider a reduction at a later date, at the next dividend date.

There was then some discussion about the earnings and, as I recall it, there was a showing in the earning statement [831] that there was a downward trend in earnings, and finally Mr. Anderson moved that the dividend be made 37½ cents instead of 50 cents.

I think Mr. Elsey seconded the motion, and the motion was put and carried.

Mr. Earl was present at the meeting. I don't recall that he said anything about it. But he left the meeting rather hastily and the next morning he dropped into my office and said he had come to see Mr. Hockenbeamer, and that his New York principals—I believe he mentioned Mr. Dame—had com-

(Testimony of John P. Coghlan.)

municated with him and that they were disturbed that the dividend had been reduced without notice to the North American Company and he, Mr. Earl, had been asked to obtain a reconsideration, and he asked me what I thought about it. I told him I thought the incident was closed and over with. He said he was going in to talk to Mr. Hockenbeamer about it.

He did leave my office and later in the day Mr. Hockenbeamer told me Mr. Earl had talked to him about it and had said that Mr. Dame wished the matter reconsidered, but that he, Mr. Hockenbeamer, didn't see there was any chance for reconsideration.

Q. Other than that you do not recall any instance in which the attitude of the North American on any matter, either prospective or retrospective, was brought to your attention? [832]

A. No, I do not. Mr. Earl never asked me about my other matter in behalf of the North American Company or any other representative of the North American Company never asked me.

Q. Mr. Coghlan, you were a director of the company, were you not, at the time that it acquired from North American the holdings of Western Power Company and Great Western Power Company of California, and the San Joaquin Light and Power Company?

The Examiner: May I interrupt? Is this a different subject than that of the dividend situation?

(Testimony of John P. Coghlan.)

Is this going to be a long series of questions? I ask because we had an agreement some days ago, and renewed later, that we would recess promptly at 4:00 o'clock so these gentlemen could attend their meeting, their Executive Committee meeting.

Do you want to go on for a while?

Mr. Phleger: Off the record.

(Remarks off the record.)

The Examiner: On the record.

Mr. Phleger: I will withdraw the question.

The Examiner: It can be read to the witness in the morning.

We will recess now until 10:00 tomorrow morning.

(Whereupon, at 4:00 p. m. an adjournment was taken to Wednesday, November 20, 1940, at 10:00 a. m.) [833]

Proceedings

The Examiner: Are you ready?

Mr. Phleger: Yes.

The Examiner: Mr. Coghlan.

Mr. Phleger: I wonder if, as a matter of convenience to Mr. Palmer and a witness who will succeed him, it is agreeable to the Examiner to put Mr. Palmer on.

Miss Calkin: Yes.

The Examiner: It is all right with me. Mr. Cogh-

(Testimony of John P. Coghlan.)

lan, I understood, wanted to finish up as soon as he could, or, at least, he wanted to last night.

Mr. Black: Mr. Palmer said he had the time.

Mr. Phleger: All right. Suppose, then, we proceed.

The Examiner: Whichever you want is all right with me.

Have the record show Mr. Coghlan has already been sworn.

Whereupon—

JOHN P. COGHLAN

was produced as a witness for and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Direct Examination
(Resumed)

The Examiner: Mr. Phleger, do you want that last question that you propounded read this morning? [836]

Mr. Phleger: Yes, please.

(The question referred to was read by the reporter as follows:

"Q. Mr. Coghlan, you were a director of the company were you not, at the time that it acquired from North American the holdings of Western Power Company and Great Western Power Company of California and the San Joaquin Light & Power Company?")

(Testimony of John P. Coghlan.)

A. I think not. I think I was elected a director in April, April, 1930, and the contract acquiring the Great Western and San Joaquin was made in March, if my recollection is correct.

By Mr. Phleger:

Q. I think that is correct, so that you have no direct knowledge yourself, then, of the action of the Board of Directors in connection with that transaction? A. No, I have not.

Q. Are you a director of the Vallejo Light & Power Company? A. Yes, I am.

Q. How long have you been such a director?

A. I have a memorandum here to which I will refer. (Examining document) I was elected a director on June 28, 1930, at which time Thomas J. Shaub, our general attorney, and myself were elected directors of that company. [837]

Q. Now, how many directors has the company?

A. The company has five directors.

Q. Who are the other three directors?

A. Dr. E. J. Casper and his two sisters, Mrs. Irma Casper Silverstein and Mrs. Mattye Casper Rosenberg.

Q. What percentage of the outstanding stock of that company is owned by the Pacific Gas and Electric Company? A. 45.83 per cent.

Q. And what interest or interests own the remainder of the stock?

A. Dr. Casper and his two sisters own the remainder of 54.17 per cent.

Q. To what extent does the Pacific Gas and Electric Company participate in the formulation

(Testimony of John P. Coghlan.)

of the policies and participate in the management of that company?

A. That company is really a family company. Under our minority interest we have little or nothing to do with the policies. We have one stockholders meeting a year and three or four directors meetings and at the directors meeting Dr. Casper usually reports upon earnings and upon business possibilities and sometimes upon rate problems and that is about all. He carries on the company largely in his own way.

Q. Does the Pacific Gas and Electric Company participate other than as a minority stockholder in the business [838] or affairs of the Vallejo Company? A. No, it does not.

Q. Does the Vallejo Company own any properties outside the State of California?

A. No, it does not. The properties are confined to the City of Vallejo and a small area around the city.

Q. Have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is or was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. No, I have not.

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or

(Testimony of John P. Coghlan.)

policies of the Pacific Gas and Electric Company would you, as a director, oppose such attempts?

A. I would, because I would believe it not to be to the best interests of the Pacific Gas and Electric Company.

Q. Do you think that the other directors of the Applicant, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts? [839]

A. I believe they would. They are all Californians with very strong local California interests.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. I do not think it would be.

Q. Why?

A. Well, I think first because of the great number of stockholders in California, of the great local interests, because of the connections of these various directors, and I also have no reason to believe that any great number of the eastern stockholders would follow the North American rather than the western directors and western management.

Q. If the North American Company were to attempt to secure sufficient proxies to obtain a majority of the representation at a stockholders meeting and such an attempt were resisted by the management and the San Francisco directors of the

(Testimony of John P. Coghlan.)

Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt?

A. I think it would not be.

Q. And what are the reasons for your conclusion?

A. Well, the reasons that I have stated that apply to the other question, that I think the stockholders have [840] faith in the western management and in the western directors, and I feel that the western directors have such widespread connections that they would control—be able to control a great number of stockholders and the majority of the stock.

Mr. Phleger: That is all.

The Examiner: Cross examine.

Cross Examination

By Miss Calkin:

Q. Mr. Coghlan, you testified that you, in connection with your duties with the company, formulated, or, at least, worked on a pension plan that is now in effect? A. Yes.

Q. In connection with the formulation of that plan and the work that you did on it in 1936, did you have any contacts with the North American Company? A. None at all.

Q. Can you tell me when the North American Company acquired its present interest in the Vallejo Electric Light & Power Company?

(Testimony of John P. Coghlan.)

A. You mean when the Pacific Gas & Electric Company——

Q. Yes, when the Applicant——

A. (interposing) In 1929—I don't have the exact date—but in 1929 Pacific Gas and Electric Company purchased its interest in the Vallejo Electric Light & Power [841] Company.

Q. From whom did it acquire its interest?

A. It purchased the interest from the Rosenberg and Adler families who were relatives, either cousins, uncles, or aunts of the Casper family.

Q. Does that company have only one class of stock outstanding?

A. Only one class of stock outstanding, that is all. At the present time it has 10,000 shares of a capitalization of a hundred thousand, and after considerable discussion application has been made to the usual authorities to increase the capital to 60,000 shares at a par value of $600,000. Proceedings are now pending. That will result in more certificates or more paper to the various stockholders.

Q. But you don't contemplate the sale of any additional stock?

A. No. The plan of the Casper family is to issue the stock, or part of it, to the existing stockholders in due proportion.

Q. But not for any additional consideration?

A. No.

Q. And as a director of the Vallejo Company you have no contact with that company other than at directors meetings?

(Testimony of John P. Coghlan.)

A. That is all. Once in a while I see Dr. Casper [842] on the street or talk to him on the telephone on some matter that he would consult me about.

Q. Who, among the directors of the Vallejo Electric Light & Power Company are most active in the management of that company?

A. Dr. Casper is entirely active. He is the president and general manager and operates the company entirely.

Q. Did that family organize the company originally?

A. Yes, the company was organized on June 18, 1897 by K. Casper, the father of these children. When he died some years ago his son, Albert Casper, was the manager for many years. Albert Casper died after we acquired our interest and Albert Casper's interest and the interest of Albert Casper's mother passed to the three children who now control the property, Dr. Casper and his two sisters.

Q. Then, is it correct to say that the Casper family organized the company and have been in active charge of the management ever since it was organized?

A. Ever since it was organized, that is true.

Q. Do you know Mr. Shea?

A. No, I do not.

Q. To what extent have you discussed the affairs of the Applicant with Mr. Fogarty on the occasions that [843] you have seen him?

A. Only in a very general way. Generally he

(Testimony of John P. Coghlan.)

has asked some questions about the company and I have answered his questions, given him some information that he has asked for, all in a general character.

Q. How many times have you seen the representatives of the North American Company in New York?

A. I should say that I have been in New York five or six times in the last 10 or 12 years.

Q. Why do you believe that the control of the Applicant by the North American Company would be against the best interests of the Applicant?

A. Well, I believe a holding company control is not of the best advantage to a corporation like ours. I believe that our corporation has an unusual standing in California, as a California corporation, controlled by Californians and that its long identity with California would be injured by control of any eastern influence.

Q. Was your salary increased shortly after Mr. Black became president of the company?

A. It was increased sometime after he became president; I don't know just when.

Q. Do you know whether or not the North American Company had anything to do with the increase?

A. No, I am sure it did not. I think—I hope it [844] was earned.

Q. Well, you never requested any representatives of the North American Company for the increase? A. No, I did not.

(Testimony of John P. Coghlan.)

Q. You have never been associated with the Western Power Corporation or any of its subsidiaries? A. No, I was not.

Q. During your association with the Applicant who would you say have been the most dominant persons in its organization?

A. In its organization or in the Board of Directors?

Q. In the entire organization. Who would you say has been the most dominant?

A. Well, I wouldn't say that in the directors any particular man is dominant; they are very active and forceful men. The presidents of the company have always been active and strong men. Mr. Creed was an active strong man; Mr. Hockenbeamer was in a different way and, I think, Mr. Black is an active and forceful man.

Q. You don't know anything about what assurances the North American Company might have given in connection with the 1930 transaction?

A. No, except to have Mr. Hockenbeamer—Mr. Hockenbeamer stated that the North American had given him assurance that it would not interfere in the management or control of the [845] Pacific Gas and Electric Company.

Q. Mr. Hockenbeamer discussed with you some of the matters pertaining to the negotiations leading up to the acquisition?

A. Only generally as to the negotiations, but he did discuss that subject with me at different times,

(Testimony of John P. Coghlan.)

and I heard it discussed in the Executive Committee. Mr. Hockenbeamer made statements to the members of the Executive Committee that he had assurances from the North American Company.

Q. In your opinion, was Mr. Hockenbeamer apprehensive that the North American Company might dominate the affairs of the Applicant in the event that it acquired a large block of its securities?

A. The negotiations ran along for a considerable time and when that subject came up I thought Mr. Hockenbeamer had it determined. He spoke of it as a matter that had been determined by his discussion with the North American representatives.

Q. Do you know anything about any assurance that the Standard Gas & Electric Company was required to give by the Applicant at the time it acquired a substantial block of its stock?

A. No, I do not. [846]

Q. What do you know about any understanding had between North American and the Applicant in regard to North American's representation on your Board?

A. I know nothing about that of my own knowledge. I heard—Mr. Hockenbeamer did say to me and did say in the Executive Committee that North American was entitled to three members on the Board because of their proportionate stock holding.

Q. What about representation on the Executive Committee?

A. I didn't hear that discussed until I saw Mr.

(Testimony of John P. Coghlan.)

Earl up here at the Executive Committee; at least, I don't recollect any discussion.

Q. I believe you testified you resigned in order to make way for one of North American's representatives on the Board? A. Yes, I did.

Q. That was at Mr. Hockenbeamer's request?

A. Yes.

Q. Do you know why North American now has only two representatives on your Board?

A. No, I do not. I know that Mr. Earl died some months before Mr. Hockenbeamer died and that no action was taken to fill his place. I understand—I don't know that I was told so in so many words—that Mr. Earl was [847] retained by the North American Company by way of reward or pension for his past services.

Q. Was it your understanding that Mr. Earl was receiving compensation from the North American Company? A. It was.

Q. During the time he was a director of the Applicant? A. Yes.

Q. Do you know whether or not Mr. Earl was then an officer or director of the Western Power Corporation? A. No, I don't recall.

Q. You never heard any discussion relative to North American being requested not to have a third representative on the Board in order that a local director might serve?

A. No, I heard no such suggestion.

(Testimony of John P. Coghlan.)

Q. Has anyone connected with the North American Company ever told you in effect that its representation on the Board was not as important during Mr. Black's presidency as it was during Mr. Hockenbeamer's presidency?

A. No one has ever told me that.

Q. Do you consider Mr. Black as a North American representative on Applicant's Board?

A. No, I do not.

Q. Since when have you not so considered him?

A. I have never considered him since he was elected president. A few days before he was elected president Mr. [848] Elsey sent for me at his office in the American Trust Company and he told me that several members of the Board, or several members of the Executive Committee had discussed Mr. Black for president of the company, and had proposed to recommend him to the Board of Directors. He said, "Mr. Black has agreed to resign from the North American Company and will sever his connections with the North American Company" and we had a little discussion about that, and I recall his saying that he considered Mr. Black a western man and asked me what I thought about it.

I told him that I knew Mr. Black as a western man and that all his interests were in the west, and that I regarded him as being in the East temporarily.

Q. What do you know about the proxy machinery of the Applicant?

A. Well, as long as I can remember the proce-

(Testimony of John P. Coghlan.)

dure in the company the senior officers of the company have been the proxy representatives. Mr. Creed and Mr. Britton and Mr. Hockenbeamer were proxy representatives in the early days; then, Mr. Creed, Mr. Leach and Mr. Hockenbeamer, and after Mr. Creed died the representatives were Mr. Hockenbeamer, Mr. Leach and Mr. Foote; then, Mr. Hockenbeamer, Mr. Downing and Mr. Foote, and when Mr. Black came in it was Mr. Black, Mr. Downing and Mr. Foote. It has been the same officers for years with different names. [849]

Q. You mean the particular officers of the company have been selected proxies as a matter of course?

A. Yes, and then the proxy representatives have been approved either by the Executive Committee or the Board of Directors. Since I have been sitting with the Executive Committee I have noticed that the Proxy Committee has been approved on recommendation of the president and the necessary resolutions passed.

Q. Well, do you know who makes up the list of directors as proposed candidates for directors included in the proxy statements sent out with solicitation for proxies?

A. Usually the old directors are elected at each annual meeting.

Q. Has there been a proxy fight in the history of the Applicant?

A. Not since I have had reason to know anything about it.

(Testimony of John P. Coghlan.)

Q. So far as you know, have all of the directors of the company always been unanimously elected at annual stockholders meetings? A. Yes.

Q. Do you know how the Applicant is advised as to who North American desires as its representatives on the Board? A. No, I do not. [850]

Q. How frequently has Mr. Black advised you as to North American's wishes in reference to a particular matter, either personally or in a Board meeting, or in a meeting of an Executive Committee?

A. I don't recall that he has ever advised me of any wishes of the North American Company.

Q. In any of your discussions with Mr. Black has he ever indicated to you what North American's viewpoint on any matter was?

A. No, he has not.

Q. Since you have been a director have you ever been advised in any way what North American's desires were with respect to a particular matter?

A. No, except in that matter of dividend that I referred to yesterday.

Q. Then, the advice that you received in that respect came from Mr. Earl. A. Mr. Earl, yes.

Q. Was that the only representative of North American Company that had ever discussed the matter with you? A. The only one.

Q. Have you ever asked Mr. Black what North American's views were in connection with any matter pertaining to the Applicant?

A. No, I don't recall that I have. [851]

(Testimony of John P. Coghlan.)

Q. What weight do you think should be given to any suggestion that North American might make in respect to any matter pertaining to the Applicant?

A. Well, I think it should have the recognition that a stockholder would be entitled to. I think any stockholder is entitled to make suggestions and have suggestions and recommendations considered, and if they are for the advantage of the Pacific Gas and Electric Company should be acted on favorably.

Q. Do you feel free to act upon any matter relating to the Applicant's business without being advised as to what North American's views are on the matter? A. I do.

Q. What was the extent of Mr. Earl's activities during the time he was a member of your Executive Committee and on your Board of Directors?

A. Mr. Earl attended quite regularly. He took rather copious notes. I don't recall that he was ununusually active in the meetings: he discussed matters generally.

Q. Did he frequently propose suggestions and recommend them with a great deal of force?

A. No, I don't recall that he did.

Q. Has there ever been any major difference of opinion between Mr. Black and the Board since he has been president? [852]

A. No, I should say not. His relations with the Board have been quite harmonious.

Q. What about that situation during Mr. Hockenbeamer's presidency?

(Testimony of John P. Coghlan.)

A. As to the dividend?

Q. No. As to the relationship between Mr. Hockenbeamer and the Board

A. Well, I would say Mr. Hockenbeamer's relations with the Board were not quite as smooth as Mr. Black's, because Mr. Hockenbeamer made decisions in his—largely in his own way and he sometimes didn't present matters until he had worked them out himself and presented them more or less as concluded, and I think Mr. Black submits matters in a more general way and more frequently to the Board and has more discussion before action is taken.

Q. In other words, do you consider Mr. Black more amenable to advice from the Board than Mr. Hockenbeamer was.

A. No, I don't. I think that Mr. Black has a little more ability to handle men than Mr. Hockenbeamer had.

Q. Well, would you say that Mr. Black kept the Board more closely advised as to matters which he has presented to him for consideration than Mr. Hockenbeamer did?

A. Yes, he does. Mr. Black has a habit of bringing up matters a number of times beginning in the early days of—I should say the early hours of a negotiation and transaction, [853] and keeping the Executive Committee informed, discussing the matter at different meetings.

Q. So that it is your opinion that during Mr. Black's presidency the Executive Committee and

(Testimony of John P. Coghlan.)

the Board has been in closer touch with the problems pertaining to the Applicant than it was during Mr. Hockenbeamer's lifetime?

A. Yes, I feel that way about it.

Q. Did you have any contacts with the North American Company regarding Mr. Black's presidency prior to the time he became president?

A. No, no, I did not.

Q. Was your first knowledge that Mr. Black was being considered as president of the Applicant after Mr. Hockenbeamer's death that received by you from Mr. Elsey in the conversation that you have just testified concerning?

A. Yes, that is the first I had heard of it. It came from Mr. Elsey; he called me to his office and told me about it.

Q. What further discussions did you participate in regarding Mr. Black's selection prior to the time it was acted upon by the Board?

A. I had that talk with Mr. Elsey and then a day or so later Mr. Miller sent for me and asked me to prepare some publicity and something of the nature of a biography [854] of Mr. Black, but that was all. The matter came up in the Board meeting and was acted upon.

Q. Were any other individuals considered for president of the Applicant?

A. Mr. Elsey told me others were considered, but he didn't mention any names.

Q. Was it your understanding in your conversation with Mr. Elsey that at the time he talked to

(Testimony of John P. Coghlan.)

you that he had conferred with all the members of the Executive Committee and other members of the Board?

A. He told me that he had conferred with several members of the Board and I assumed all the members of the Executive Committee, although he didn't put it that way. As I recall, he told me specifically he talked with Mr. Miller, Mr. Chickering and others.

Q. Do you know whether or not before Mr. Black was offered the position of the president of the Applicant, he was required to give any assurance as to what his future attitude toward the North American would be?

A. No, I do not, except that statement that Mr. Elsey made that Mr. Black would resign his vice-presidency and sever his connection with the North American Company.

Q. In your opinion, could North American exert a substantial influence over the policies and management of the Applicant if it exerted such an influence over Mr. Black [855] even though representatives of the North American Company never attended Board meetings or had any other contacts with other directors or officers of the Applicant?

A. No, I don't think so. I think the directors of the company would be quite independent and would act according to their judgment to the best interests of the company.

Q. Do you know anything about the extent of the contacts between Mr. Black and the North

(Testimony of John P. Coghlan.)

American Company? A. No, I do not.

Q. Are you familiar with Applicant's Exhibit No. 33 and 45? A. What are the exhibits?

Q. Those constitute the exhibits relating to the reports made by the Applicant to the North American Company.

This is 33 (indicating) and 45 is the statistical statement that was introduced when Mr. Beckett was on the stand.

A. (Examining documents) I am familiar with these reports having seen them in the meetings of the Executive Committee and elsewhere and having seen them, through the officers of the company, that is all.

Q. Do you have any knowledge of any reports other than those included in Applicant's Exhibits 33 and 45 which are made by the Applicant to the North American Company either regularly or irregularly? [856]

A. No, I have not. As a matter of fact, I didn't know these were being sent to the North American Company.

Q. Do you personally send any reports to the North American Company? A. None.

Q. What has been the extent of your correspondence with that company?

A. I have had no correspondence except, as I said, a personal letter or two to Mr. Fogarty or Mr. Doolittle acknowledging speeches or addresses that they have made. I had a little correspondence with Mr. Fogarty last year on a personal matter.

(Testimony of John P. Coghlan.)

It was this: Two years ago my son was in Harvard Law school, and I wrote Mr. Fogarty and asked him to send the boy an introduction to Dean Landis; that is the only correspondence I have had with Mr. Fogarty that I recall.

Q. Were you advised from any source as to North American's wishes in regard to the increase of dividends on the common stock of the Applicant which occurred in 1936? A. No, I was not.

Q. And the only advice you had concerning their attitude during the reduction was that received from Mr. Earl? A. That is all. [857]

Q. Did Mr. Black discuss with you the advisability of an increase in the dividend in 1936 prior to the time it was recommended to the Board?

A. He mentioned it to me before the dividend was declared and called attention to the better earnings, and to the fact that the company was in a position to pay an additional dividend?

Q. Do you know whether or not North American Company was advised as to the proposed increase prior to the time the action was taken by the Board? A. No, I do not.

Q. What do you know about National City's relationships with the Applicant during the period 1921 to 1931 or '32?

A. Very little, except the general knowledge that the National City Company handled some of our bond issues.

Q. They handled them all during that period, did they not? A. Yes, all of them, yes.

(Testimony of John P. Coghlan.)

Q. Do you know who selected the National City Company as syndicate manager of the various issues of bonds put out by the Applicant?

A. No, I do not.

Q. During that period?

A. No, I do not. [858]

Q. Who carried on the negotiations in relation to the sale of the bonds of the Applicant?

A. Mr. Hockenbeamer did in those days.

Q. Is it your opinion that Mr. Hockenbeamer handled those matters almost exclusively without the aid of assistance of other officers or employees of the Applicant?

A. He probably had the assistance of other employees, but he generally had charge of our financing at that time.

Q. You mean he would personally carry on the negotiations with the underwriting syndicate?

A. Yes, as far as I know.

Q. Your work in connection with the company is not of a financial nature?

A. No, it is not.

Q. Who, in your opinion, is responsible for the selection of Lazard Freres & Company as syndicate manager of the $45,000,000 issue of bonds sold by your company in March of 1935?

A. Well, I assume that Mr. Hockenbeamer was.

The Examiner: Miss Calkin, I have noticed on a number of occasions you have referred to this $45,000,000 issue of March 1935. According to Applicant's Exhibit 42 that was in April 1935.

(Testimony of John P. Coghlan.)

Miss Calkin: Maybe that is correct. I have some other information that the bonds were sold on March twenty [859] something.

The Examiner: Again, according to the same exhibit, the $90,000,000 bond offering of March 1936 you have referred to as April 1936. I don't know whether this Exhibit 42 is correct or not.

Miss Calkin: I don't know the exact date but I think——

The Examiner (Interposing): It may not be important because apparently nobody is confused by the difference.

Miss Calkin: My information is that the bonds were sold on March 28, 1935, and I don't think you have a date for April '35, but there was not any other $45,000,000 issue during the entire year.

The Examiner: No; I say there apparently has been no confusion about it except the exhibit differs.

Miss Calkin: The date I have for the $90,000,000 issue is March '36.

Mr. Phleger: I don't think there is any confusion. It is a fact that under the requirements of the Securities Act the bonds are frequently sold to the underwriter conditionally before they are sold by the underwriter to the public. There is a delay of at least 20 days in there which may very well account for the March and April dates.

Miss Calkin: And may have been the date of the underwriter's contract.

Mr. Phleger: Yes. [860]

(Testimony of John P. Coghlan.)

Miss Calkin: Was there a question that was unanswered?

(The last question and answer were read by the reporter.)

By Miss Calkin:

Q. Did the representatives of any underwriting house approach you in an effort to get the leadership of that business? A. No.

Q. Do you know whether or not Mr. Hockenbeamer conferred with any representatives of the North American Company in regard to the selection of Lazard Freres as syndicate manager of that issue? A. No, I do not.

Q. Do you know whether or not any representatives of the North American Company objected to the selection of Lazard Freres?

A. No, I do not.

Q. Did you have any participation in the selection of the syndicate manager or any members of the syndicate other than your approval of the syndicate as a director of the corporation?

A. I had no part in it except to approve it as a director.

Q. Are you acquainted with Mr. Charles Blyth?

A. Yes. [861]

Q. Did Mr. Blyth ever talk to you concerning the desirability of the firm of Blyth & Company heading the Applicant's business?

A. No, he did not.

Q. At no time during 1935 or 1936?

A. No, I don't recall that he ever did.

(Testimony of John P. Coghlan.)

Q. Did any representatives of Blyth & Company talk to you in regard to such matters during that period?

A. No, I don't recall that any of them ever did.

Q. Did Mr. Black, after he became president, discuss with you the change of leadership of syndicates formed to purchase Applicant's bonds from Lazard Freres & Company to Blyth & Company?

A. No. I heard some discussion in the Executive Committee to the effect that Blyth was a western house with widespread connections over the country and was considered a very able distributor of bonds.

Q. Did you ever hear any criticism of the manner in which Lazard Freres handled the issues which were purchased by the Syndicate headed by it?

A. No, I don't recall any criticism.

Q. Now, in the Executive Committee discussions that you refer to what members of the Executive Committee participated in the discussion?

A. Well, I remember Mr. Black discussed the matter of [862] the bond issues at several different meetings stating the progress that was being made and the price that was likely to be obtained, and there was a general discussion as to Mr. Blyth leading the syndicate, and some discussion as to his western connections and the fact it was a western house.

Q. Would you say that any member of the Executive Committee other than Mr. Black was urging the selection of Blyth & Company?

(Testimony of John P. Coghlan.)

A. Well, I have a recollection that Mr. Chickering spoke favorably on behalf of Mr. Blyth. I don't recall any other member of the Executive Committee.

Mr. Phleger: That is Mr. Blyth, you mean?

The Witness: Blyth, yes.

By Miss Calkin:

Q. Did you get the impression that the selection of Blyth & Company was more agreeable to the members of the Executive Committee and later to the members of the Board, than had been the selection of Lazard Freres & Company.

A. I thought so because of Mr. Blyth's western connections and the fact that he was a western house.

Q. Were you, as a director, more favorable to Blyth & Company's leadership than that of Lazard Freres & Company?

A. I was because of Mr. Blyth's western connections. [863] I thought any identification with the western house was helpful to the company.

Q. Did Mr. Black ever tell you that the North American Company suggested a change in the syndicate management of Applicant's issue?

A. No, he did not.

Q. Did you have any contacts with any representatives of the North American Company in regard to this matter? A. No, none.

Q. Do you know who is responsible for the inclusion of Dillon Read & Company in the syndicate

(Testimony of John P. Coghlan.)

which purchased the $90,000,000 issue of April, 1936? A. No, I do not.

Q. Did you hear any discussion regarding the participation of Dillon Read & Company in that syndicate? A. I don't recall any now.

Q. Do you have any knowledge as to why Dillon Read & Company were not included in the syndicate formed in May of 1936 to purchase the $30,000,000 issue? No, I do not.

Q. To what extent has North American, to your knowledge, participated in the formulation of the financial policies of the company?

A. I don't know that it has participated in any way.

Q. Do you know whether or not Mr. Black conferred [864] with any representatives of the North American Company in regard to the price at which various issues put out by the Applicant during his presidency should be sold? A. No, I do not.

Q. Do you know where the negotiations between the Applicant and the syndicate manager have been carried on since Mr. Black has been president?

A. I understand here in San Francisco with Mr. Blyth.

Q. It is your best judgment that the negotiations were carried on between the Applicant and the San Francisco Branch of Blyth & Company rather than the New York Branch of Blyth & Company?

A. Yes, that was my understanding.

Miss Calkin: I think that is all.

(Testimony of John P. Coghlan.)

Redirect Examination

By Mr. Phleger:

Q. Mr. Coghlan, you have testified that you called at the North American office in New York when you have been in New York which, you stated, was five or six times in the last ten or twelve years. Were those business calls or——

A. (Interposing) No, they were social calls. I never went to the North American office on any particular business. I was always in the East either at conventions or on vacations or some matter down in Washington.

Q. Mr. Coghlan, is it a fact that certain matters of [865] policy are presented by Mr. Black to the Executive Committee and on occasion to the Board of Directors for discussion before Mr. Black himself has to come to a decision as to what should be done?

A. Yes, that is true. I have in mind two recent matters. These leases—this lease that we are negotiating with the City of San Francisco has been before the Executive Committee since last June. Mr. Black reports on it each week and discusses the matter and some of the members of the Executive Committee discuss the matter and make suggestions, and I suppose the judgment that has been reached is kind of a composite judgment.

Then, I have in mind the recent rate reductions that were made. They were discussed several times

(Testimony of John P. Coghlan.)

in the Executive Committee, the character of the reductions and the amounts, and I recall Mr. Miller expressing himself as to the type of rate setup that should be made.

Q. Well, would it be fair to say that Mr. Black's decisions and recommendations on policy matters are usually the result of first talking out and discussing with the Executive Committee the problem and using the benefit of the suggestions of the Executive Committee in arriving at a conclusion which represents the composite views of all?

A. I think that is a correct statement. He is very free in his discussion and very—and goes into considerable [866] detail in matters of interest to the committee.

Q. And he takes advantage of these suggestions in the formulation of his own ultimate views, does he not? A. Yes, I should say he does, yes.

Q. Would it be fair to say that the harmonious relationship that exists between Mr. Black and the members of the Executive Committee and Board of Directors is primarily due to the fact that he discusses prior to final decision, freely and fully with the Executive Committee and the Board all such questions in order to first determine their viewpoints and benefits by those viewpoints, if possible?

A. I think that is very true. I think his method has been very satisfactory to the Board and to—or to the Executive Committee particularly and to himself.

(Testimony of John P. Coghlan.)

Q. Now, you have been asked as to dominant figures in the history of the company and you have mentioned a succession of presidents.

Is it not a fact that there have always been a substantial number of able active rugged individualists on the Board and Executive Committee of the Company ever since you have been connected with it?

A. Yes; Mr. Miller is of that type; Mr. Frank B. Anderson was particularly of that type; Mr. Creed was of that type and Mr. Frank Drum.

Q. Was Mr. Elsey of that type? [867]

A. Mr. Elsey; yes, Mr. Elsey is quite forceful, but not as vigorous in expression as the other gentlemen.

Mr. Phleger: That is all.

Miss Calkin: Just one further question.

Recross Examination

By Miss Calkin:

Q. Do you have charge of the advertising of the Applicant?

A. No, I have general—some general supervision over it but the publicity department reports directly to Mr. Downing. I am consulted very generally on advertising.

Q. Have you ever conferred with any representatives of North American Company in regard to advertising policies?

A. Never, no, never have.

Miss Calkins: That is all.

The Examiner: You may be excused, Mr. Coghlan.

(Witness excused)

Mr. Phleger: Will you take the stand, Mr. Palmer, please.

Whereupon—

SILAS H. PALMER

was produced as a witness for and on behalf of the Applicant and having been first duly sworn, was examined and testified as follows: [868]

Direct Examination

By Mr. Phleger:

Q. How long have you resided in California, Mr. Palmer?

A. I was born here a little over 66 years ago.

Q. When did your family first come to California?

A. My father came in '68 and my mother was born here.

Q. Has your family lived here ever since?

A. Yes.

Q. What is your business or profession?

A. Well, I was in the construction business for some 35 years.

Q. Your present position, rather business?

A. Well, I am no longer in the construction business.

(Testimony of Silas H. Palmer.)

Q. Would you say acting as a corporation director in investment matters and so forth?

A. Yes.

Q. What corporations are you connected with as a director or officer?

A. I am a director in Pacific Gas, the Bank of California, the Paraffine Companies; I am a trustee of the Cypress Lawn Association.

Q. Are you a director of the Railway Equipment and Realty Company? [869] A. Yes.

Q. Of the Golden State Company, Ltd.?

A. Yes sir.

Q. Pacific Coast Aggregates? A. Yes.

Q. Are all of those companies western companies? A. Yes.

Q. Is it fair to say that all of your interests of a financial nature are western rather than eastern?

A. Predominantly so.

Q. Have you any close connection with any eastern corporation?

A. None whatever, never have had.

Q. Do you own any stock of the North American Company? A. No.

Q. Have you ever owned any? A. No.

Q. So far as you know, do you own any securities of any subsidiaries of the North American Company?

A. I am positive that I don't.

Q. Do you know anybody who does own any stock of the North American Company or its subsidiaries?

(Testimony of Silas H. Palmer.)

A. No, I don't; I know nothing of the setup of the company. [870]

Q. Directing your attention to Exhibit 32, Applicant's 32, will you state the number of shares of Applicant which you yourself own and also the number of shares that are held or owned by interests with which you are affiliated?

A. I own 1275 shares of the common stock. Mrs. Palmer owns 800 shares of the preferred and 3720 shares of the common. My sister-in-law, Mrs. Knight, owns 500 shares of common.

There is a trust, of which Mrs. Palmer is one of the co-trustees that owns 6412 shares of the preferred and 3344 shares of the common.

Q. Now, you are an officer, rather, a director, are you not, of the Bank of California?

A. Yes, and they own—no, they do not own; they hold in trust, or they are in estates of which they are executor or administrator, agent and as custodian, 91,305 shares of preferred and 32,588 shares of common.

Q. How long have you been a stockholder of the Pacific Gas & Electric Company?

A. Can I refer to notes?

Q. Yes.

A. (Examining document) 1914 I purchased the first shares.

Q. And have you been a rather consistent purchaser [871] of stock since that time?

A. Yes.

Q. And is the same thing true of Mrs. Palmer?

(Testimony of Silas H. Palmer.)

A. Yes, Mrs. Palmer bought her first stock in 1916.

Q. And has been a stockholder and a consistent purchaser of stock since that time?

A. Since that time.

Q. When did you first become a director of the Pacific Gas and Electric Company?

A. In the fall of 1936.

Q. Who spoke to you about becoming a director?

A. Mr. Black.

Q. When did you become a member of the Executive Committee of the Pacific Gas and Electric Company? A. In the spring of 1938.

Q. Who spoke to you about becoming a member of the Executive Committee? A. Mr. Black.

Q. How long have you known Mr. Foote of the Pacific Gas and Electric Company?

A. Oh, I have—it is hard to place the date with him because, of course, if I had heard of him, but I would say that I have known him, 10, 15 years.

Q. How long have you known Mr. C. O. G. Miller? A. As far back as I can remember.

[872]

Q. How long have you known Mr. John D. McKee? A. For about 37 years.

Q. How long have you known Mr. Norman B. Livermore?

A. As far back as I can remember; we were youngsters together.

Q. How long have you known Mr. A. L. Chickering?

(Testimony of Silas H. Palmer.)

A. I have known him about—over 50 years.

Q. How long have you known Mr. Downing?

A. About 25 years.

Q. How long have you known Mr. Coghlan?

A. I have known Mr. Coghlan for 20 years or more, I guess 20 years.

Q. How long have you known Mr. McIntosh?

A. I have known Mr. McIntosh for 40, 45 years.

Q. How long have you known Mr. Wishon?

A. I have not known him so long, perhaps 15 years.

Q. How long have you known Mr. W. W. Crocker?

A. I have known his about 20 years.

Q. Did you know his father, Wm. H. Crocker?

A. I knew his father, Mr. Crocker, in 1901. He was at that time financing one of the electric companies that is now part of the P. G. & E., and he would make frequent visits to the project and I was on the project.

Q. How long have you known Mr. Henry D. Nichols? [873] A. Well, over 50 years.

Q. Were you acquainted with Mr. Frank Dame in his lifetime?

A. No, never met him; I don't believe I ever saw him.

Q. Were you ever acquainted with Mr. Edwin Gruhl during his lifetime?

A. I never have met him; I don't believe I ever saw him.

(Testimony of Silas H. Palmer.)

Q. Are you acquainted with Mr. F. W. Doolittle?

A. Is he of the Doolittle family, California mining?

Q. No; he is an officer of the North American Company.

A. Eastern—no, I never have met him, never heard of him—never saw him.

Q. Are you acquainted with Mr. James F. Fogarty of the North American Company?

A. Never have met him or seen him to my knowledge.

Q. Are you acquainted with Mr. Herbert C. Freeman?

A. No, never have. I may have met Mr. Freeman. I think he was an engineer on the Great Western Power project. Was he the Freeman that was—there was a Freeman on the Great Western Power project 20 years—25 years ago that I met at one time, but whether it is the same man or not, I don't know. [874]

Q. That was John R. Freeman, I believe.

A. I think it was, yes.

Q. Well, at least, you haven't seen or heard of a Freeman for many years? A. No.

Q. Have you ever had any communications directly or indirectly with any of the men I have just mentioned? A. These last men?

Q. Yes. A. No.

Q. Do you ever do any work or have any connection with any property which is now a part of Pa-

(Testimony of Silas H. Palmer.)

cific Gas and Electric System? A. Yes.

Q. What was that?

A. Well, in 1901 one of the first jobs I had was on the construction of the Tabeau Dam which is above the electra power house and it was a part of the Standard Electric project, and at that same time we put in two tunnels, one at the outlet of this—the Tabeau Reservoir and one inlet tunnel up at Mill Creek.

Q. That Standard Electric Company that you refer to is a California Corporation?

A. Yes.

Q. Whose properties have since become part of the [875] Pacific Gas and Electric properties?

A. Yes.

Q. Those are the properties that Mr. Wm. H. Crocker was heavily interested in?

A. Yes, he financed them, I believe.

Q. Now, how long have you known Mr. J. B. Black? A. 20 years.

Q. When did you first become acquainted with him?

A. At the time that my firm did some construction work on the Western Power Company at Lake Almanor.

Q. The Great Western Power Company?

A. Great Western Power, yes.

Q. When was that?

A. It was 1920 or '21.

Q. And have you been acquainted with him ever since? A. Yes.

(Testimony of Silas H. Palmer.)

Q. You knew of his work as an officer of the Great Western Power Company, did you, before he went East? A. Yes.

Q. Have you attended meetings regularly of the Board of Directors and of the Executive Committee? A. Yes.

Q. Do you freely and fully discuss all matters which are brought before those two bodies?

A. Yes. [876]

Q. Does any individual dominate the activities of those two bodies? A. No.

Q. Did you know that the North American Company was a substantial stockholder in the Pacific Gas & Electric Company when you became a director? A. Yes sir.

Q. Have you ever heard the name of the North American Company mentioned in any meeting of the Board of Directors or of the Executive Committee since you have been a member?

A. I probably heard it mentioned casually, but I can't recall any particular time or in connection with any particular discussion.

Q. Has the attitude of the North American Company with respect to any pending matter ever been stated at a meeting of the Executive Committee or Board of Directors?

A. Not to my recollection.

Q. Have you ever at any time or in any connection observed anything to indicate that the Pacific Gas and Electric Company is or was controlled

(Testimony of Silas H. Palmer.)

directly or indirectly by the North American Company, or the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. I never have seen any indication of it. [877]

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, would you oppose such attempts?

A. I certainly would.

Q. You think that the other directors of the company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I think so.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company do you think it would be able to do so? A. I do not.

Q. Why?

A. Well, I think the stock is very largely held in California and when not held by residents they are people who are in pretty close with the situation here in California, and I think from experience they have learned that Eastern domination of a corporation in California is not apt to be successful. Personally that has been my observation and I would be very much opposed to any concern that I had

(Testimony of Silas H. Palmer.)

anything to do with being dominated from the East, and I think that is a generally held opinion by the people who are investors in this community. [878]

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation of the stockholders meetings of the Pacific Gas and Electric Company and such an attempt were resisted by the management in San Francisco, and the directors, do you think that the North American Company would be successful in its attempts?

A. I do not. If there was any opposition whatever by local people I don't believe they could get anywheres near a majority.

Mr. Phleger: That is all.

The Examiner: We will recess now before you start your cross examination. Five minutes.

(Thereupon a short recess was taken after which proceedings were resumed as follows:) [879]

The Examiner: Have you any further questions, Mr. Phleger?

Mr. Phleger: I have completed my examination.

The Examiner: Cross examination, Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. Palmer, you testified that Mr. Black had requested you to serve on Applicant's Board. Prior to that request had you ever made any request to

(Testimony of Silas H. Palmer.)

any of the directors or any representatives of the Applicant, regarding representation on the Board by you?

A. I never made any suggestion of any kind.

Q. Why would you oppose North American influence over the policies and affairs of the Applicant?

A. Well, it has been my observation for a good many years that eastern domination of a California company has not worked out. I would feel the same in regard to the Pacific Gas.

There is quite a bit of that stock there that, perhaps, was not bought on my advice exactly, but I was certainly quizzed by Mr. Holbrook concerning conditions. I know it was his idea that in buying that stock he was buying into a corporation that was operated by Californians, and it was in California and subject only to California influences.

Q. Who was Mr. Holbrook?

A. He was my father-in-law and——

Q. (Interposing) You are speaking of the stock in your [880] personal holdings, family holdings?

A. No. I am speaking of the stock in this trust.

Q. But it is a family trust? A. Yes.

Q. I thought Mr. Holbrook was connected with the Bank of California.

A. No. I feel that his idea was sound and as long as I have any influence with the trustees I feel that the thing to do is to carry out his ideas as far as possible.

(Testimony of Silas H. Palmer.)

Q. Were you ever financially interested in the Western Power Corporation or any of its subsidiaries?

A. I think I owned, if I am not mistaken, a few shares at one time, but not for very long. I think it was 100 shares.

Q. Was that prior to 1925 or after 1925?

A. It was considerably after that.

Q. Do you know who controlled the Western Power Corporation prior to 1925?

A. Well, it was always my idea that Mortimer Fleishhacker was the dominating influence there.

Q. Is he a Californian? A. Yes.

Q. So far as you know Western Power Corporation was not controlled by eastern interests prior to the time North American acquired control of that corporation?

A. Well, I am not very familiar with that; but I think [881] there was a good deal of eastern capital in there at one time, but I believe Mortimer and his brother were the dominating influences. Whether they represented eastern capital or not I don't know.

Q. Are you referring now to the Great Western Power Company of California, the operating company, or the Western Power Corporation, which was a holding company, with respect to the Great Western Power Company of California?

A. I don't know the difference. I don't know enough about the setup of the company to know the

(Testimony of Silas H. Palmer.)

difference. I do know in dealing with the company from a construction point of view that Mortimer Fleishhacker seemed to be the dominating influence.

Q. And you were dealing with the operating company? A. Yes.

Q. By reason of the fact that you did not become a member of Applicant's Board until 1936, you did not participate in or have no first hand knowledge of any of the negotiations leading up to the acquisition by North American of a large block of common stock of the Applicant? A. No.

Q. And you had nothing to do with the selection of Mr. Black as President of the Applicant, did you? A. Nothing.

Q. Did anyone ever tell you how he came to be selected [882] as Applicant's President?

A. I guess it is nothing but common gossip—The general idea was, and my idea was that he was a man who had been educated here and had received his training as far as possible out here, and his ten years or less experience in the east would be of material help to him in operating a big company.

Q. Since you have been Director, or a member of the Executive Committee of the Applicant, has Mr. Black ever advised the Board or the Executive Committee as to North American recommendations on any matter?

A. I never heard him advise the Board in that connection at any time.

Q. Have you ever been advised from any source

(Testimony of Silas H. Palmer.)

as to what North American's desires were with respect to a particular matter?

A. Never had any communication with them whatsoever.

Q. To your knowledge has the Board or the Executive Committee ever asked Mr. Black to ascertain the viewpoints of North American on a matter relating to the Applicant?

A. No; it has never been done in my time.

Q. What weight would you, as a Director of the Applicant, give to any suggestions which North American might make in view of the fact that that company is the largest stockholder of the [883] Applicant?

A. It would set up a prejudice against it.

Q. Since you have been a Director have the relationships between the Board and Mr. Black been harmonious? A. Yes.

Q. As far as you know the Board has never opposed a proposition urged by Mr. Black?

A. Well, the discussions on matters that have come up have been very free and very full. I don't think Mr. Black has ever taken a decisive stand on any proposition, and I don't believe any of the Directors have taken a solid stand against any proposition. It has been a case where the situation has been thoroughly discussed in a very friendly way. I think in each instance the result has been satisfactory to all the members.

Q. In other words, the discussions have resulted

(Testimony of Silas H. Palmer.)

in an agreement between Mr. Black and the members of the Board on all matters?

A. Yes; the discussions have been very full on any important matters.

Q. Do you think it would be possible for North American to exert an influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even though North American representatives never attended Board meetings or had any other contacts with the other officers or Directors of [884] the company?

A. I don't believe that Mr. Black could influence the Executive Committee, particularly, and probably the Board on any fundamental matter that the members didn't think was for the best interests of the company.

Q. Do you know the extent of Mr. Black's contacts with North American people? A. No.

Q. Are you familiar with the reports submitted by the Applicant to the North American Company?

A. No.

Q. So far as you know the North American Company is kept no better advised as to the policies and operations of the Applicant than any other stockholder?

A. As far as I know they are not.

Q. Have you ever been acquainted from any source with North American's attitude on the Hetch Hetchy situation?

(Testimony of Silas H. Palmer.)

A. Never have heard them mentioned in connection with it.

Q. Were you a member of the Board at the time the dividend of the Applicant on its common stock was increased in 1936? A. Yes.

Q. Who recommended the increase at that time?

A. My recollection of it is that Mr. Black suggested it, and it was discussed by the different members of the Board and finally it was passed. [885]

Q. Do you know whether or not the North American Company was advised of the increase before the action increasing the dividend was taken by the Board? A. No, I do not.

Q. Do you know whether or not the North American Company recommended the increase in dividends on the common stock at that time?

A. No; there was no statement of that made at that meeting, I am sure.

Q. Do you know anything about the circumstances which resulted in a change of the leadership of Applicant's financing from Lazard Freres & Co. to Blyth & Co.? A. No.

Q. Since you have been a Director I believe the Applicant has had two issues of bonds, no, one issue of bonds, which were sold to the public, namely, 35 million dollar issue in October of 1936. Did you hear any discussion at that time as to the selection of the syndicate, manager of the syndicate which purchased that issue?

A. No. I was made a Director just about that

(Testimony of Silas H. Palmer.)

time and I do not believe that the matter was discussed at the first meeting that I attended. I think it had all been cleaned up. I remember that one of the first duties I had to perform was in connection with a lot of papers to be signed in connection with this refunding operation. [886]

Q. But you didn't take an active part in that piece of financing?

A. No. It was all done before I was on the Board.

Q. Do you recall the 15 million dollar bond issue of February, 1938, which was sold privately to a number of insurance companies, I believe?

A. No, I don't.

Q. Who, generally speaking, handles the financing of the Applicant?

A. I would say that Mr. Black did that, formulated the general policy, after discussion. He discusses the matter with the Executive Committee rather fully.

Q. Are you acquainted with the underwriting firm of Lazard Freres & Co.? A. No.

Q. Are you acquainted with Mr. Charlie Blyth?

A. Yes.

Q. How long have you known him?

A. Oh, I have known him twenty or thirty years, I guess.

Q. Do you consider the underwriting house of Blyth & Co., with which he is connected, as a California banking house? A. Yes.

(Testimony of Silas H. Palmer.)

Q. If the selection of a syndicate manager for any piece of Applicant's financing were to be determined by you, would you favor the selection of Blyth & Co. over Lazard Freres & Co.? [887]

A. Other things being equal, yes.

Q. Do you know to what extent, if any, North American was consulted in reference to the financings of the Applicant since you have been Director?

A. No. As far as I know they haven't been consulted at all.

Miss Calkin: I think that is all.

The Examiner: Any redirect, Mr. Phleger?

Redirect Examination

By Mr. Phleger:

Q. Mr. Palmer, is it Mr. Black's practice, prior to himself announcing any conclusion on important matters, to thoroughly discuss those matters with the Executive Committee and with the Board?

A. Yes. The usual procedure is for Mr. Black to bring up a subject in the very beginning and give us all an opportunity to think it over during the week. He advises us of the progress of negotiations, and we have discussions for several meetings usually. We are kept advised of progress and any suggestions we wish to make are made.

Q. And is it fair to say that Mr. Black's own judgment and views are very largely influenced by the judgment and views of the Executive Committee? A. It seems that way to me.

Mr. Phleger: That is all. [888]

(Testimony of Silas H. Palmer.)

The Examiner: Any further questions?

Miss Calkins: No further questions.

The Examiner: You may be excused, Mr. Palmer. Thank you.

(Witness excused.)

Mr. Phleger: Mr. Nichols, please.

Whereupon—

JOHN D. NICHOLS

was produced as a witness for and on behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Nichols, will you give your name and address for the record, please? A. Residence?

Q. Yes.

A. John D. Nichols; 40 Lincoln Avenue, Piedmont.

Q. How long have you lived in California, Mr. Nichols? A. Sixty-seven years.

Q. You were born here? A. Yes.

Q. When did your parents come to California?

A. My father arrived in 1851; my mother about 1860.

Q. Since that time has your family lived here continuously? A. They have. [889]

(Testimony of John D. Nichols.)

Q. What is your business or profession?

A. Cordage manufacturer.

Q. You are President of the Tubbs Cordage Company, are you? A. Yes.

Q. What companies are you connected with as director or officer?

A. Well, the Pacific Gas and Electric Company, Pacific Telephone & Telegraph Company, Wells Fargo Bank—I should have mentioned the Tubbs Cordage Company, I guess, which I haven't—Hiram Tubbs Estate Company, A. L. Tubbs Company, Henshaw Investment Company, Riverside Cement Company, San Diego County Water Company.

Q. Are you a director of the California Western States Life Insurance Company?

A. Yes, I am.

Q. Are you a director of the Firemen's Fund Insurance Company?

A. Yes; Firemen's Fund Insurance and Firemen's Fund Indemnity.

Q. Are you a director of the California Packing Corporation? A. Yes.

Q. Are you associated in any capacity with the Federal [890] Reserve Bank of the Twelfth District?

A. Yes. I serve on the Advisory Committee, Industrial Advisory Committee, and also on the Executive Committee of the Advisory Committee.

Q. You are a director or an officer of all of these corporations that you have mentioned?

(Testimony of John D. Nichols.)

A. Yes.

Q. Is it a fair statement to say that all of the companies in which you have a financial interest are California or western companies?

A. Yes, they are.

Q. Have you any substantial interest in any eastern corporations? A. No, I have not.

Q. Do you own or have you ever owned any stock in the North American Company?

A. I have not.

Q. Or in any of its affiliates or subsidiaries?

A. You mean——

Q. (Interposing) Of the North American Company.

A. No, I have not; no interests in any of them.

Q. Referring to Applicant's Exhibit No. 32, Mr. Nichols, will you state the number of shares which you, or interests with whom you are affiliated, own in the Applicant?

A. I own directly and personally 1,000 shares of preferred [891] stock and 2928 shares of common stock; Mrs. Nichols owns 2,000 shares of preferred and 3,000 shares of common; our daughter, Mrs. John Blemer, owns 500 shares of preferred and 500 shares of common; my son owns 400 shares of preferred and 853 shares of common; a family connection, Mrs. Alice H. Tubbs, owns 3,300 shares of preferred and 1272 shares of common.

The affiliates: Tubbs Cordage Company owns 14,000 shares of preferred and 3,630 shares of com-

(Testimony of John D. Nichols.)

mon; the A. L. Tubbs Company owns 200 shares of preferred and 238 shares of common; the Wells Fargo Bank & Union Trust Company owns 36,751 shares of preferred and 32,952 shares of common.

Q. I believe the California Western States Life Insurance Company——

A. (Interposing) owns 4,000 shares.

I have family connections that haven't been put down, and they represent about 10,000 shares more.

Q. How long have you owned stock in the Applicant's company?

A. Some stock many years ago. I recall I accepted some common stock after the fire of 1906 in payment of a dividend that was delayed or deferred at the time of the fire in 1906. That was a small holding. I have forgotten the exact year, but probably somewhere from 1914 to 1918 or 1919.

Q. And you have been accumulating stock ever since then? A. Yes. [892]

Q. Have you ever sold any stock in the company?

A. Never.

Q. Is that statement true also with respect to the stock owned by the Tubbs Cordage Company?

A. It is.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. March, 1938.

Q. Who invited you to become a director?

A. Mr. Black.

Q. How long have you known Mr. Black?

A. I have known Mr. Black for many years by

(Testimony of John D. Nichols.)

reputation, but personally about five years; about the time that he came out here to take over the presidency of the company.

Q. Were you acquainted with Mr. Frank Dame in his lifetime? A. No.

Q. Were you acquainted with Mr. Edwin Gruhl in his lifetime? A. No.

Q. Were you acquainted with Mr. F. W. Doolittle? A. No.

Q. Do you know Mr. James F. Fogarty, or Mr. Herbert C. Freeman? A. I do not. [893]

Q. Have you ever communicated with them directly or indirectly? A. I have not.

Q. Have you ever heard the name of the North American Company mentioned in any meetings of the Board of Directors of the Pacific Gas and Electric Company? A. I believe not.

Q. Have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas and Electric Company is or was controlled, directly or indirectly, by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence, directly or indirectly, by the North American Company?

A. No, I have not observed any such connections.

Q. If the North American Company were to attempt, directly or indirectly, to control or to exercise a dominating influence over the management or

(Testimony of John D. Nichols.)

policies of the Pacific Gas and Electric Company would you oppose such attempts? A. I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I believe they would. [894]

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, do you think it would be able to do so?

A. No, I do not think so.

Q. If the North American Company had attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting of the Pacific Gas and Electric Company, and such an attempt were resisted by the management, and the San Francisco directors, do you think the North American Company would be successful in its attempt? A. I do not think so.

Q. Will you give the reason for that conclusion?

A. I think the Pacific Gas and Electric Company is, you might call it, a western or local company, and its stockholders are largely residents of the State of California. I cannot imagine that they would approve of the management of this company leaving the State and coming under the domination of the North American Company, or any other holding company.

(Testimony of John D. Nichols.)

Q. Do you think it would be to the interest or advantage of the company, or its stockholders, if it were to be controlled or dominated by any interest outside California? A. No, I do not.

Mr. Phleger: That is all. [895]

The Examiner: Cross examination?

Cross Examination

By Miss Calkin:

Q. Mr. Nichols, prior to the time Mr. Black requested you to become a member of the Applicant's Board had you requested representation on the Board of any director of the Applicant, or anyone? A. No.

Q. How well did you know Mr. Black prior to the time he made the request for you to serve on the Board?

A. I had met him, I think it was about five years ago, and I may have met him occasionally after that. At the time that he invited me to serve on the Board, or since that time, I have seen more of him naturally.

Q. What members of the Applicant's Board were you acquainted with at the time you became a director of the Applicant?

A. Well, Mr. C. O. G. Miller, Mr. Chickering, Mr. McIntosh, Mr. Livermore, Mr. McKee, Mr. Palmer, Mr. Coghlan, Mr. Crocker, Mr. Foote, and Mr. Wishon.

Q. Had you known those gentlemen for some period of time? A. Yes; most of them.

(Testimony of John D. Nichols.)

Q. Were any of them personal friends of yours?

A. Yes. [896]

Q. You said that you would oppose any attempt by the North American Company to influence or dominate the affairs of the Applicant. Why would you oppose any such attempt?

A. Because I think it would be a detriment to the interests of the other stockholders and the company. It would be entirely wrong to allow the dominating features to be outside the State of California.

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. No.

Q. Did you ever have any financial interest in that company? A. None whatever.

Q. As a Director of the Applicant what consideration have you given to the problems of the Vallejo Electric Light & Power Company?

A. I haven't given any consideration to it. I don't recall that.

Q. That is a company in which the Applicant owns approximately a 45 per cent interest. Do you recall the problems of that company, which operates in Vallejo, ever being considered by the Board of Directors of the Applicant?

A. I don't recall. It might have taken place, but I don't just recall it at the moment.

Q. And you were not acquainted with the company? [897] A. No.

(Testimony of John D. Nichols.)

Q. You don't know who does operate it?

A. I do not.

Q. You had nothing to do with the selection of Mr. Black as President of the Applicant?

A. No, I did not.

Q. Has anyone ever told you why the North American Company does not now have three members on the Applicant's Board of Directors and a representative on the Executive Committee, rather than only two directors and no representative on the Executive Committee? A. No.

Q. You never heard that matter discussed?

A. No.

Q. Has anyone ever told you that the North American Company did not consider its representation on the Applicant's Board as important since Mr. Black has become President of the Applicant as was considered prior to that time? A. No.

Q. Do you know who selects the proxies, or the proxy committee, for the annual meeting of Applicant's stockholders? A. I don't remember.

Q. Do you know who makes up the slate of directors which are included in the proxy statement which accompanies the notice of the annual stockholders' meeting in the solicitation [898] for proxies?

A. I imagine the management makes up that. The outgoing directors, as a rule, are re-elected. That has been the case in the two years that I have

(Testimony of John D. Nichols.)

been there. I assume it has been the same system for a long time.

Q. Would you say that Mr. Black, during the time you have been a director, has never advised the Board as to what North American's desires were in respect to any matter pertaining to the Applicant?

A. To my knowledge he has never advised the Board about anything in reference to North American.

Q. Have you ever inquired of Mr. Black, or of anyone else, what North American's attitude was with respect to particular matters?

A. I have not.

Q. What weight would you, as a director, give to North American's suggestions in view of the fact that that company is your largest stockholder?

A. I would give them the same weight that I would give to suggestions from any other stockholder.

Q. Would you give them greater weight in view of the fact that the North American Company has a large position and a great deal of experience in the utilities field?

A. I would give them more weight than some very small stockholder, but what I term the larger stockholders, I think [899] not.

Q. Since you have been a director of the Applicant, has there ever been any major difference of opinion between Mr. Black and the Board?

(Testimony of John D. Nichols.)

A. No.

Q. Mr. Nichols, do you feel free to act on any major problem pertaining to the Applicant without receiving North American's viewpoint on the same? A. Absolutely free.

Q. Did anyone ever tell you who suggested that Mr. Black become President of the Applicant?

A. No.

Q. Do you think that it would be possible for North American to exert a substantial influence over the management and policies of the Applicant if it exerted such an influence over Mr. Black, although its representatives did not participate in Board meetings and its representatives had no contacts with the Applicant's personnel or directors?

A. I don't quite understand your question?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. No, I do not.

By Miss Calkin:

Q. Do you have any knowledge as to the extent of the [900] contacts between Mr. Black and the North American people? A. None whatever.

Q. At the times that the determination of Applicant's dividend policy has been considered by the Board has there ever been any mention made of the wishes of the North American Company with respect to dividends on the common stock?

(Testimony of John D. Nichols.)

A. I have never heard any.

Q. Do you know whether or not North American has been consulted in reference to Applicant's policy in regard to the Hetch Hetchy situation?

A. I do not.

Q. Do you know anything about the circumstances under which Blyth & Co. was chosen to head the underwriting syndicate which purchased the 90 million dollar bond issue sold by the Applicant in 1936?

A. No; I have no knowledge of that.

Q. Are you acquainted with Mr. Blyth?

A. Yes.

Q. How long have you known him?

A. I guess about twenty-five years.

Q. Do you consider Blyth & Co., with which Mr. Blyth is associated, a California underwriting house? A. Yes, I do.

Q. Do you know any members of the firm, or associated with the firm of Lazard Freres & Co.? [901]

A. I do not.

Q. Is it your opinion that at no time since you have been a director of the Applicant that North American has exerted any influence over the affairs of the Applicant?

A. They have not so far as I know.

Miss Calkin: I think that is all.

(Testimony of John D. Nichols.)

Redirect Examination

By Mr. Phleger:

Q. Mr. Nichols, I think I forgot to ask you whether you now, or at any time, have owned any stock in the North American Company?

A. I have not.

Miss Calkin: You asked him that.

A. (continuing) Or at any time.

By Mr. Phleger:

Q. Other things being equal, as a director of the Pacific Gas and Electric Company would you favor a California underwriting house over an eastern underwriting house?

A. I certainly would. I think that all California corporations should do their business of financing in California if it is possible to do it.

Q. How long have you known Mr. Miller?

A. C. O. G. Miller?

Q. Yes.

A. I can't remember when I didn't know him. It must be [902] sixty years.

Q. How long have you known Mr. John D. McKee? A. Oh, I guess about forty years.

Q. How long have you known Mr. Norman B. Livermore?

A. That goes back I guess I can say fifty years or more.

Q. How long have you known Allen L. Chickering?

(Testimony of John D. Nichols.)

A. From the time he was a youngster; I will say over fifty years.

Q. How long have you known Mr. Downing?

A. Probably about ten years, I would say.

Q. How long have you known Mr. McIntosh?

A. Over forty-five years.

Q. How long have you known Mr. Silas Palmer?

A. More than forty-five years; fifty years.

Q. How long have you known Mr. William W. Crocker?

A. I have known him for quite a number of years. I can't really recall when I first met him.

Q. Did you know his father, William H. Crocker? A. Yes; for many, many years.

Mr. Phleger: I think that is all.

Miss Calkin: No further question.

The Examiner: You may be excused, Mr. Nichols.

(Witness excused.)

Mr. Phleger: I would like to recall Mr. Beckett.

[903]

Whereupon—

E. J. BECKETT

was recalled as a witness for and on behalf of the Applicant, and, having been previously duly sworn, was examined and testified as follows:

(Testimony of E. J. Beckett.)

Direct Examination

By Mr. Phleger:

Q. Mr. Beckett, you were asked on cross examination yesterday whether or not it was the practice of the company to send advance proofs, or a copy of its annual report, to the North American Company before those reports were published.

A. Yes.

Q. And I believe the record will show that your answer was that you did not. Since yesterday have you refreshed your recollection and gone through the correspondence with respect to that matter?

A. Yes. I thought last night, when I came to think over my testimony, that I recalled Mr. Black had, on one or two occasions, sent advance proofs of the annual reports to all of the directors, if time permitted, before the actual publication. Ordinarily there is very little time for such a thing because, owing to the requirement of the New York Stock Exchange that annual reports be in the hands of stockholders at least fifteen days prior to the annual meeting, so we always end up with the [904] printing of the report in rather a rush. There is not usually much time for sending copies of the report to directors or anyone else. But on one or two occasions I do recall that Mr. Black has sent copies of the reports, where time permitted, to all of the directors.

Q. Any copy that may have gone to Mr. Fogarty or to Mr. Freeman was sent to them, was it not,

(Testimony of E. J. Beckett.)

at the same time that similar copies were sent to all of the other directors?

A. Unquestionably; yes.

Q. Do you know of any suggestions that have ever been received from Mr. Fogarty, Mr. Freeman, or anyone connected with the North American Company, with respect to the report prior to the time the final report has been mailed to the stockholders?

A. I do not.

Mr. Phleger: I think that is all.

Cross Examination

By Miss Calkin:

Q. Has there ever been an instance in which the North American Company suggested any changes in the form of the report as submitted to them in the instances that you have just testified about?

A. Not prior to the actual printing of the report. Subsequent to the report I think there has been at least one instance of that kind. [905]

Q. But the report as submitted has never been changed after a suggestion of the North American Company?

A. You mean that the form has never been changed?

The Examiner: Form or content.

The Witness: I don't get the question.

By Miss Calkin:

Q. As I understand it, you have on a few occasions sent them a draft of the final report prior to the time it was printed in final form.

(Testimony of E. J. Beckett.)

A. That is right.

Q. Now, on those instances has the North American Company ever suggested any changes which were incorporated in the final report of that year as sent out to the stockholders?

A. No.

Q. You mean on the one occasion that you recall of North American having made suggested changes those changes were incorporated in the report for the succeeding year?

A. I don't say that they were incorporated. I don't recall whether they were or not. I don't recall exactly what the changes were, but I do recall that on one occasion one of the directors of the North American Company, after reviewing the report in its final form for that particular year, did make some suggestions as to the form of the report; for example, the location of statistical tables, as I recall, or something of [906] that type.

Q. That suggestion came after the report had been distributed? A. That is correct.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: You are excused.

(Witness excused.)

The Examiner: Do you want to call another witness at this time?

Mr. Phleger: We have a witness appearing at 2:00 o'clock, so I would suggest we adjourn now.

The Examiner: We will recess until 2:00 p. m.

(Whereupon, at 12:05 p. m., a recess was taken until 2:00 p. m. of the same day.) [907]

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: Whenever you are ready.

Mr. Phleger: Mr. McIntosh, take the stand at this time.

Whereupon—

C. K. McINTOSH

produced as a witness for and on behalf of the Applicant, having been first duly sworn, testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. McIntosh, what is your residence address?

A. Here in San Francisco? You mean particularly in San Francisco?

Q. Yes. A. 1925 Gough Street.

Q. How long have you been a resident of California?

A. A little over fifty-three years.

Q. You came here, I understand, in 1887?

A. That is right.

(Testimony of C. K. McIntosh.)

Q. And have resided here constantly ever since?

A. Ever since in California.

Q. Yes. What is your business or profession?

A. A banker if I be one. [908]

Q. And what bank are you connected with?

A. The Bank of California.

Q. At present what position do you hold?

A. I am Chairman of the Board of Directors.

Q. And before assuming that position you were President, were you not?

A. Yes, for some years.

Q. What other firms or corporations are you connected with either as a director or as an officer?

A. I had better consult because I don't know that I could recite them all from memory.

Besides the Bank of California I am a Director of the California Packing Corporation, the Federal Reserve Bank of San Francisco, the Firemen's Fund Insurance Company, the Kennedy Mining and Milling Company, Merchants Exchange Incorporated, Pacific Gas and Electric Company, Pacific Telephone and Telegraph Company, Russ Building Company, and the San Francisco and Fresno Land Company. I think that is all.

Q. Are all those companies what might be termed California or San Francisco corporations?

A. All except—unless it be that the Federal Reserve Bank of San Francisco is not a California corporation in that sense, but it is a West Coast organization.

(Testimony of C. K. McIntosh.)

Q. Are you interested in a substantial way in any [909] corporations which are located or have their main offices in the east?

A. You mean financially interested?

Q. Yes.

A. Oh, in a very modest way. I suppose I have some shares of stock, a few shares of stock in several of them.

Q. But your main interests are and always have been——

A. (Interposing) Always, yes.

Q. (Continuing) California and particularly San Francisco enterprises? A. Entirely.

Q. Do you own or have you ever owned any stock in the North American Company?

A. Never.

Q. Or any of its affiliated or subsidiary companies? A. Never.

Q. I will show you, Mr. McIntosh, Applicant's Exhibit 32 and ask that by reference to it you state the number of shares of stock of the Pacific Gas and Electric Company which your family and affiliated interests own or hold.

A. I own directly in my own name 900 shares of the preferred stock, 6 per cent preferred stock. My wife is the owner of 1200 shares of the same stock.

Now, do you speak of the amount in the bank?

Q. Yes. [910]

A. The bank has in its custody and under its,

(Testimony of C. K. McIntosh.)

not control, but under its method of operation 123,000 shares, something of that kind. I think the total there would be 125,993 if this mathematics is correct. That is held in various capacities.

It is held first as executor under the wills of those who have it in their estates, second as trustee under testamentary trusts, in which that stock is incorporated as some of the assets of the trust, thirdly in voluntary trusts that are made not testamentary by order of the court but are made by the voluntary act of the trustor and those trusts have stock in it.

Then we have what are called agency accounts. "Agency Accounts" means that if one is not inclined to bother about their own affairs they turn their investments and certificates and whatnot over to us and we handle it as if we were their clerk; collect the dividends, collect their accounts and in cases where they wish we pay their bills, and still a larger amount, and probably the largest single amount we have is simply left with us for safekeeping. That is to say they wish their securities centralized and they will be left in the bank and a receipt given to them for safekeeping for their account.

The Examiner: Do these figures include those securities as well?

The Witness: Beg your pardon? [911]

The Examiner: These figures that you have read

(Testimony of C. K. McIntosh.)

from this chart include those safekeeping securities as well?

The Witness: Yes, it includes all, includes all the ones that are under our custody, in our custody. They are not under our control, but they are in our custody.

By Mr. Phleger:

Q. The latter amounts that you say are in your safekeeping are actually in the bank's possession?

A. Oh, yes, absolutely physically there.

Q. And I suppose the depositors, that is, the owners of those securities are clients of the bank?

A. Are our own people.

Q. Yes. Those do not include securities which are in safe deposit boxes, of course?

A. Oh, no, not at all; we know nothing of that.

Q. Mr. McIntosh, you were associated over a period of many years, were you not, with Mr. Frank Anderson?

A. Oh, yes, many years.

Q. He was an officer of the Bank of California?

A. Yes.

Q. During his lifetime?

A. Yes, he was an officer all the time I knew him.

Q. He was for many years, was he not, a director and member of the Executive Committee of the the Pacific Gas and Electric Company? [912]

A. He has been a director of the Pacific Gas and Electric Company, I think, way back to its

(Testimony of C. K. McIntosh.)

earlier days. I don't know of another director that has been any longer than he was. He was connected with its incipiency away back there.

Q. Was he in his lifetime very active in his affairs?

A. Yes, as a director and member of the Executive Committee.

Q. Did he frequently discuss the Company's affairs with you? A. Often.

Q. Do you recall when it was that you first were elected a director of Pacific Gas and Electric Company?

A. I have got that. I couldn't remember. (Examining document) I was elected a director, first as a temporary director in February of 1926. I might explain how that was, if you would care to have me do so.

Q. Yes, if you will.

A. Mr. Anderson, who was not only my associate there in the bank, but he was one of my warmest personal friends besides, had been a director, as I say, from the early days of the Gas Company in its smaller form and was intensely interested in it, and as he grew older he began to take things a little more leisurely. He would sometimes start out on a trip which would take him from three to six months. During [913] that interim—I can only presume from what has happened—the people in the Gas Company then in control didn't wish to have his connections severed because of his long-time asso-

(Testimony of C. K. McIntosh.)

ciations and knowledge of their affairs and yet they would have hesitated to have gone to a stranger and asked him to take a temporary job. Knowing my connection with him and my interest in the company and my knowledge in a certain way of its affairs they would come to me and ask me if I would consent to pinch-hit while he was gone and get out when he came back, so that was perfectly understood and I was very glad to do it. I did that on three occasions. In 1926, I was there from February to June; in 1930, I was there from January until July; in 1932, I was there from July until September.

Then, in 1935, I was elected a director. He died in 1935 and I was elected a director and I have served since.

By Mr. Phleger:

Q. Mr. McIntosh, during the periods which you served as a director, as you might say, in place of Mr. Anderson, in 1926, again in 1930, and again in 1932, did you also serve as a member of the Executive Committee of the company?

A. Yes, each time.

Q. Mr. McIntosh, the Bank of California is a large bank, is it not, having its head offices in San Francisco with branches in both Oregon and Washington? A. Oregon and Washington, yes. [914]

Q. It has been a bank in this community for many years? A. Since 1864.

(Testimony of C. K. McIntosh.)

Q. Yes. The American Trust Company is also a large bank? A. Oh, yes.

Q. Which has been in existence and its predecessors for many years? A. Oh, yes.

Q. Is the same thing true of the Crocker First National Bank?

A. Oh, yes, they all go back many, many years and the elements which make them up. The Bank of California still has its original form. It never either amalgamated with or was amalgamated with another.

In case of the American Trust Company, the Crocker, the Wells Fargo and all the old banks, they each have their antiquity but not in the exact form of their present title. They all go back as early as we are; some might trace it earlier.

Q. The Wells Fargo Bank and Union Trust Company is also a large institution? A. Very.

Q. There are associates of yours on the Board of Directors of the Pacific Gas and Electric Company that are associated with each of the banks that I have named? [915]

A. Yes, yes. There are directors of the Gas Company who are associated with the American Trust and also the Wells Fargo and also the Crocker, that is correct.

Q. Who first talked with you about becoming a director of the Pacific Gas and Electric Company? Let us go back to the 1926 occasion.

A. That was the President of the Gas Com-

(Testimony of C. K. McIntosh.)

pany. Whether Mr. Creed was alive then I don't know. It was Mr. Creed if he were alive and Mr. Hockenbeamer if he were alive.

Q. Yes, and latterly when you assumed your present directorship in 1935 who was it that spoke to you?

A. Mr. Black then spoke to me about it.

Q. Yes. Were you acquainted with Mr. Frank Dame and Mr. Edward Gruhl who are now deceased?

A. Not that I know of. *Are* they connected with the North American.

Q. In their lifetime they were connected with the North American Company.

A. Well, I have a vague recollection—I don't know whether it is accurate at all or not—I have a vague recollection that I was serving on that Executive Committee at the time the arrangement for the purchase of the North American properties was consummated, not while it was being originated or carried out, but when it was consummated I was there, I think, [916] and have a vague recollection that two men from some place in the east were there. Whether they were either of these men or others, or whether they were officers of the company I don't know. I wouldn't know them if I saw them on the street. I may have met anyone who might have been here at that time but if I did so it was a casual meeting at the time that thing took place.

Q. You have already testified that you served as a director and member of the Executive Committee

(Testimony of C. K. McIntosh.)

of the Applicant during the period January to July, 1930, and it is a fact that the transaction between the North American Company and the Pacific Gas and Electric Company was consummated during that period?

A. On those dates I was there; I was there at that time on the Board, at that time, to consummate it. I was not there at the time it was negotiated.

Q. Did you ever know Mr. Frank W. Doolittle of the North American Company? A. No.

Q. Are you acquainted with Mr. J. F. Fogarty or with Mr. Herbert C. Freeman who are now officers and directors of North American Company?

A. Not to my knowledge. If I have ever seen them I don't know of it, no. [917]

Q. Have you ever communicated with the gentlemen I have just named, Dame, Gruhl, Doolittle, Fogarty, Freeman, by letter, telegram, telephone or otherwise? A. Never in any way, no.

Q. Did you know Mr. Guy Earl during his lifetime? A. Oh, very well.

Q. Did he serve as a director and member of the Executive Committee during some period?

A. Yes, at one of those times he was on the Board at the same time I was serving temporarily.

Q. Did he ever discuss with you Pacific Gas and Electric affairs other than at a Board meeting or a meeting of the Executive Committee?

A. No, never, except the usual discussion that would take place around the table at a Board meeting.

(Testimony of C. K. McIntosh.)

Q. Did he ever ask you to vote in any particular way on any particular matter?

A. Never, never.

Q. As a Director or member of the Executive Committee of the Pacific Gas and Electric Company have you ever heard it stated what the attitude of the North American Company was with respect to any pending matter?

A. Never, I never heard it stated. [918]

Q. Do you recall any representations by Mr. Hockenbeamer to the Board of Directors or the Executive Committee of the Pacific Gas and Electric Company during the time the North American-Pacific Gas and Electric transaction was being consummated with respect to the position which the North American Company would occupy after that transaction as a substantial stockholder in the Pacific Gas and Electric Company?

A. You mean to say whether he has stated to the Board what his understanding with them was?

Q. Yes, sir.

A. Certainly, yes; I remember that very well indeed. In fact, it was brought up by the Board in discussion several times.

Q. Yes. What statement did he make in substance?

A. The question was raised in the Board during the time that—well, I may have gathered this from

(Testimony of C. K. McIntosh.)

Mr. Anderson and my own experience—I can't be positive—the question was raised as to the propriety of getting so large an interest in an outside hand, as Mr. Hockenbeamer had assured the Board that he had secured from the North American Company a complete understanding that they would not interfere in any way, in any manner whatsoever, with the control of the company, and I believe that Mr. Anderson told me that they had cabled him to that effect while he was away. [919]

Q. Do you remember anything in connection with the election of Mr. Black to the presidency of the company?

A. I was not there at the time; I was not on the Board at the time.

Q. How long have you known Mr. Foote of the Gas Company? A. Mr. Foote?

Q. Yes.

A. Oh, "memory of man runs not to the contrary". I suppose I have known Foote forty years, I suppose.

Q. How long have you known Mr. C. O. G. Miller? A. Longer than that.

Q. How long have you known Mr. John D. McKee? A. Equally long.

Q. How long have you known Mr. Norman B. Livermore?

A. I should say twenty-five or thirty years, maybe, twenty or more.

(Testimony of C. K. McIntosh.)

Q. How long have you known Mr. Allen L. Chickering?

A. I have known him always, since I can remember, all you have mentioned.

Q. How long have you known Mr. Paul M. Downing?

A. A long time, twenty, thirty years. Paul himself is over there grinning at me. I think he is trying to prove I am older than I am. (laughter)

Q. How long have you known Mr. Coghlan?

A. The same length of time. [920]

Q. How long have you known Mr. Wishon?

A. Not so long. I knew Mr. Wishon more particularly since this amalgamation took place. I had met him before; I didn't know him as intimately as I knew some of these other actors.

Q. How long have you known Mr. Silas H. Palmer?

A. Oh, I have known him a long time too. I knew him before he was married; God knows how long that is. (laughter)

Q. How long have you known Mr. William W. Crocker?

A. Since he was a small boy in knickerbockers.

Q. Did you know his father William H. Crocker?

A. Intimately.

Q. How long have you known Mr. Henry V. Nichols?

A. Well, I should say twenty years possibly.

Q. How long have you known Mr. Black?

A. Mr. James Black?

(Testimony of C. K. McIntosh.)

Q. Yes.

A. Well, I have known him better since 1935 but I have met him before, but it was mostly casual before that.

Q. You knew him before he went east did you?

A. I knew him but I had only met him by just being introduced to him and I can't recall any of the circumstances of that.

I hope you won't tell him I don't remember him.

[921]

The Examiner: He is grinning at you too.

The Witness: He has got a worse one than that on me. (laughter)

By Mr. Phleger:

Q. Mr. McIntosh, have you ever at any time or in any connection observed anything indicating that the Pacific Gas and Electric Company is or was controlled directly or indirectly by the North American Company or that the management or policies of the Pacific Gas and Electric Company are or were subject to a controlling influence directly or indirectly by the North American Company?

A. Never at all. In fact, if it weren't for drawing upon my recollection I wouldn't even know that the North American Company is a stockholder.

Q. If the North American Company were to attempt directly or indirectly to control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company would you oppose such attempts?

(Testimony of C. K. McIntosh.)

A. Indeed I would.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Fogarty and Mr. Freeman, would also oppose such attempts?

A. I would stake my life on it.

Q. In the event that the North American Company were to [922] attempt to control or exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company do you think it would be able to do so?

A. In the vernacular "they couldn't get to first base" in my judgment.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at the stockholders' meeting of the Pacific Gas and Electric Company and such an attempt were resisted by the management and the San Francisco directors, do you think that the North American Company would be successful in its attempt?

A. I couldn't imagine they could obtain any success whatever. [923]

Q. And what reasons have you for your last answer?

A. Well, in the first place this company is a sort of California baby and Californians—I speak now because I was not born here—Californians have a sort of a native son complex, and they don't like the interference of outside people. (Laughter)

(Testimony of C. K. McIntosh.)

They are proud of their company because they have been connected with it through stock ownership for maybe a lifetime, most of them, many of them, and they would resent any outside interference of any character or kind.

In the next place, it would be so simple to show that no good could possibly be expected to come from an alignment with the North American Company or any other outside company, inasmuch as they were not—would not be able to furnish from any nearby source that they had any power to meet peak loads or anything of that kind. There would be no union of that kind.

The Pacific Gas and Electric Company certainly couldn't be improved by any engineering counsellor advice that they could give. They certainly couldn't be helped materially by any financial advice that they could give and so there wouldn't be no end that would be beneficial to stockholders that could be gained by any such thing, and the stockholders could readily be told that and would be told that, or would know it themselves. [924]

Speaking of our "Native Son Policy" it is a matter of common record here that we have one of our large corporations, not incorporated in California either, that California has spanked as thoroughly as any corporation was ever spanked by anybody. It has become a political issue and campaigns were fought on it, but just as soon as somebody else on

(Testimony of C. K. McIntosh.)

the outside started to accuse them of anything the entire outfit got up and defended them.

Now, that is what I mean by the "Native Son Policy". These people are proud of this thing; it is their own. I have forgotten the figures, but I think something like between 45 or 50 per cent of the stockholders have California addresses.

Q. That is, 40 to 50 per cent of the stock is owned by Californians? A. I think so.

Q. Yes.

A. I am not speaking by the book, but that is my recollection.

Q. Do you recall, Mr. McIntosh, some of the individuals that have been active in the affairs of the Pacific Gas and Electric Company in former years?

A. Oh, yes. I can go back before you were born. Did you ever know Joe Crockett?

Q. No. [925]

A. I did. Clear down the line; Frank Drum was a personal friend; Creed was a personal friend; John Britton was a personal friend; Hockenbeamer was a personal friend and I am getting to like James Black. (Laughter)

Q. During the entire period that you have known this company has it ever been managed, controlled or influenced by interests outside of California?

A. No.

Q. It has always been a California enterprise?

A. Always, always, always.

(Testimony of C. K. McIntosh.)

Mr. Phleger: That is all.

The Examiner: Miss Calkin?

Cross Examination

By Miss Calkin:

Q. Mr. McIntosh, would you say that you were selected as a director of the Applicant to fill the vacancy created by Mr. Anderson's death?

A. Yes—well, I don't know that I filled that particular vacancy, but after he died I was elected a director, yes.

Q. And at that time you were not particularly well acquainted with Mr. Black?

A. Not particularly; I had met him.

Q. Would you feel that you, as a director of the Applicant, were representing substantially the same interests [926] as were represented by Mr. Anderson during the period he was director?

A. Oh, entirely. I don't represent interests other than my own; I am not authorized to represent anybody on it.

Q. Well, in a sense do you not represent the interests of your bank?

A. The bank has no interest other than I have described as being in their custody. We have no control; the bank, as a bank, owns neither stock nor bonds just as it happens. I am not authorized to represent anybody?

Q. In the bank's capacity as trustee doesn't it take an interest in the companies in which it has investments?

(Testimony of C. K. McIntosh.)

A. It does, it does, and in the case of the normal course of procedure in a corporation in which, as its trustee, we have stock. We wouldn't bother to secure the consent of those otherwise interested if there was no point involved, but in the case of Pacific Gas and Electric Company or any other company if there were a controversial contest on within the company itself we would consult the people who are ultimately owners of that stock before we acted.

Q. Why would you oppose any attempt by North American Company to exert a controlling influence over the affairs of the Applicant?

A. In the first place it could do no good at all unless it be considered from a standpoint of some pyramiding on the [927] speculated value of shares in which we are not interested at all. They could furnish nothing, and then, besides, holding companies are not white-haired boys any longer. They have been given, perhaps, a degree of stigma of iniquity that is unjustified as an entirety because some have been iniquitous, but a holding company, while it may be good, has justified itself by something it can provide to the whole scheme of things to justify its being.

Now, nobody owning our stock elsewhere, the Pacific Gas and Electric Company stock elsewhere, I don't see that they could contribute a thing. Will you pardon me? (Laughter)

Q. Do you not feel that North American experts might be in a position to give the Applicant helpful advice on matters of utility financing?

(Testimony of C. K. McIntosh.)

A. Oh, no; oh, no. As a matter of fact, the man who originated the modern method of financing and such things, was Hockenbeamer and it has been followed elsewhere; perhaps, by the North American, I don't know. I am not familiar enough with them to know whether it was or not.

Q. Are you referring to the sale of preferred stock to customers?

A. Yes, and they have the company in the position in which it is now financially, where, if I am not mistaken, fully 50 per cent of its investment is represented by stock [928] as against an equal amount of bonds, instead of two-thirds and one-third or whatever portion.

Now, that was Hockenbeamer's idea.

Q. Well, you think the capitalization of the company improved, I mean, the corporate structure of the company improved under Mr. Hockenbeamer's regime?

A. Oh, well, I am not trying to ascribe all that to Mr. Hockenbeamer. At the time it was opportune to do that. They saw, the directors at that time—no doubt I can speak for them to this extent—they saw the desirability of not extending them just as far as they could on bond flotations because the time might come when expansion would take such a jump that they would be too thinly balanced by stock behind the bonds, so it was very wisely decided at that time to stimulate the stock ownership behind the bonds so that they could take care of expansion of years to come by either method.

(Testimony of C. K. McIntosh.)

Q. Were you ever associated with the Western Power Corporation or any of its subsidiaries?

A. The what?

Q. The Western Power Corporation?

A. No, never.

Q. As a director of the Applicant and as a member of its Executive Committee to what extent do you participate in the formulation of the policies of the Vallejo Electric [929] Light & Power Company?

A. I am not now a member of the Executive Committee.

Q. Well, that is correct—I beg your pardon—but as a director of the Applicant?

A. In what way do we participate in what?

Q. The formulation of the policies of the Vallejo Electric Light & Power Company?

A. Of the company itself, you mean?

Q. Yes.

A. Why, we contribute as any other director contributes.

Q. Now, I am speaking of as a director of the Applicant, to what extent do you participate in the formulation of the operating policies or financial policies of the Vallejo Electric Light & Power Company?

A. Those things are in a normal course largely matters of routine. No director, at least I am not—I don't think that any of the rest of us that are not engaged with the company are experienced either

(Testimony of C. K. McIntosh.)

gas or electric engineers. We wouldn't be qualified to participate in the discussion, technical discussions of the erection of plants or whatnot. Those of us who do know something aboue finance help with our advice. In fact, as I see it, a director's purpose is to utilize in helping the officers of the company to the extent of which he is capable, the ordinary common [930] sense and experience that he has gained in other lines which might be applicable.

Q. Well, now, are you referring to your duties as director in relation to the Applicant, that is, Pacific Gas and Electric Company?

A. Yes, or any other director to any other thing.

Q. I think you misunderstood my question.

I am speaking of the Vallejo Electric Light & Power Company in which the Pacific Gas and Electric Company has a substantial stock ownership.

A. No, I am not a director of that as far as I know.

Q. Well, as a director of the Applicant do you take any part in the formulation of the operating policies of the Vallejo Electric Light & Power Company? A. I have not.

Q. So far as you know that company's problems have not been discussed or determined by the Applicant's Board?

A. I have no doubt they have, by the committee, at least. The committee is authorized to do those things; I have no doubt they have. But, you must

(Testimony of C. K. McIntosh.)

understand that as a rule there are no problems; there is nothing but routine matter to do.

Q. I am still speaking of Vallejo Light & Power [931] Company, Mr. McIntosh.

A. As far as I know, I know nothing of their problem.

Q. Do you know who does determine the operating problems of the company?

A. The Executive Committee, I should imagine, or the directors of that company. That company has its own directors, perhaps they do it. I have no doubt; I am not informed.

Q. How would you describe Mr. Hockenbeamer's outstanding characteristics as a utility executive?

A. Well, Mr. Hockenbeamer's outstanding capacity was in finance; he was the treasurer of the company before and his outstanding capacity and habit of mind was in finance. Engineers existed in the gas company. The president or head of the company doesn't necessarily have to be an engineer or telephone operator.

Q. Who would you say was most active in carrying on the negotiations which resulted in the acquisition by the North American Company of the large block of the common stock of the Applicant?

A. Well, as you know, I was not there at the time, except at its termination I presume the officers of the company, as they would be authorized to carry on the negotiations of anything pertaining

(Testimony of C. K. McIntosh.)

to the company's progress. I presume the officers of the company, Mr. Hockenbeamer led it; I was [932] not there at the time.

Q. Do you know who represented the North American Company in connection with these negotiations? A. No, I do not.

Q. Do you know anything about any assurances which might have been given by the Standard Gas & Electric Company at the time it acquired a large block of the Applicant's stock in reference to the extent of the participation of the Standard Gas & Electric Company in the affairs of the Applicant?

A. You are speaking of the Standard as distinguished from the North American?

Q. That is correct.

A. No, I don't know anything about that.

Q. And what was your understanding again, please, as to the assurances which Mr. Hockenbeamer told the Board he had received from the North American Company in reference to its participation?

A. It was a matter, as I say, entered into in the consultations with the Board and I learned this mainly through Mr. Anderson, but afterwards I was there when it was nearly consummated, that they were a little bit reluctant to consider this large amount of stock outstanding unless there were an assurance of some sort that there wouldn't be attempted interference. [933]

(Testimony of C. K. McIntosh.)

Mr. Hockenbeamer had assured the Board, and I have heard him say so, that he had such assurance they would not interfere in any way. They regarded it as an investment instead of the property they formerly owned.

Q. Were you, as a member of the Board at that time, apprehensive as to a possible attempt by North American to dominate the Applicant's affairs?

A. Not apprehensive particularly, as they said they wouldn't. I was not apprehensive. I don't know at that time what percentage it was—it only turned out to be about 17 per cent anyway —no, it was not apprehension, rather than disinclination to face an attempt outside.

Q. So far as you know, no representatives of the North American Company appeared before the Board at that time and gave the assurances of the North American Company?

A. Not as far as I know, not at any time. [934]

Q. Do you recall any understanding had at that time, that is, in 1930, when this transaction was being carried out, as to what representation, if any, the North American Company would have on the applicant's Board in the event that it acquired stock?

A. No; I only know, as a matter of fact, that two directors were named, and I have never seen either one of them.

(Testimony of C. K. McIntosh.)

Q. Mr. Earl was a very active member of the Board during his lifetime, was he not?

A. The same as the others; just as the others at the time I was there.

Q. Have you ever been told that the North American Company did not consider its representation on the applicant's Board as important since Mr. Black has been president as it was during Mr. Hockenbeamer's lifetime?

A. Oh, no, no. As I say, in past years I have to rely upon my recollection; I never heard a thing about that.

Q. Do you consider Mr. Black a representative of the North American Company on the applicant's Board at the present time?

A. Well, I should say not.

Q. Do you know anything about North Americans having relinquished the right to a third representative on applicant's Board in order to make way for a local director? [935] A. No.

Q. Do you know who selects the proxies for the annual stockholders' meeting of the applicant?

A. I suppose they are ground out in the usual form of all corporations, ground out proxies.

Q. Do you know who makes up the slate of directors whose names are included in the proxy statements sent out with the proxies prior to the annual meeting?

A. Who selects the names of the directors?

Q. Yes.

(Testimony of C. K. McIntosh.)

A. If there is a vacancy, I suppose, it is done —I am sure it is done exactly as it is done at every other corporation. The remaining directors are considered because it is their authority to fill a vacancy in the interim, at the time of the——

Q. (Interposing) No, I mean under the present rules of the Securities and Exchange Commission it is necessary that a proxy statement including the names of all directors who the proxy committee selected by the management proposes to vote for, be sent out with the proxy solicitation, and do you know who selects the names that go in that proxy statement?

A. It is a continuation of the same names if they have been satisfactory, out of jail and still alive.

Q. Well, has that always been true so far as the applicant has been concerned since those proxy statements have [936] been made up ?

A. Well, if you mean to say that there is some group who gets together and participates in the selection of those names, I don't believe it ever happened.

Q. I don't mean to say anything, Mr. McIntosh. I just wondered how that slate of directors was chosen.

A. Perpetuation of the ones that are there if they have been satisfactory. I don't think any question of that has arisen.

(Testimony of C. K. McIntosh.)

Q. Do you know how the applicant is advised as to what persons the North American Company wants as its representatives?

A. No, I don't know anything about it.

Q. Does Mr. Black advise the Board of North American's views as to a particular measure when he submits it to the Board?

A. Never had; I haven't heard North American's name mentioned in the Board room since I can recollect.

Q. Have you ever been advised from any source since you have been a director as to what North American's attitude was with respect to a particular problem?

A. In any instance, never.

Q. Have you ever inquired of Mr. Black as to what North American's views were in respect to a pending matter? [937]

A. Never, because I didn't care.

Q. What weight do you think any suggestion which North American might make would be given to that suggestion in view of the fact that it came from the largest stockholder of the applicant?

A. North American's suggestion, whatever it was, I should think, would receive exactly the same consideration which would be given to any other stockholder's recommendation with possibly an understanding that if they made a recommendation as to some engineering or other policy, it would be considered in the light of their experience as well

(Testimony of C. K. McIntosh.)

as because they were stockholders. We would consider their reputation, or the recommendation of any stockholder, or a question from any stockholder, whether they held 17 per cent or a half of one per cent.

Q. But, to your knowledge, North American has made no such representations or recommendations since you have been on the Board?

A. Never heard of it if they did.

Q. Has the relationship between the Board and Mr. Black been harmonious at all times since you have been on the Board?

A. I am obliged to admit it has, yes.

Q. Do you, as a director of the applicant, feel free to act on any major problem concerning the applicant without [938] being advised as to North American's views?

A. Absolutely, absolutely.

Q. Did Mr. Anderson discuss with you the selection of Mr. Black as president of the applicant prior to the time you were selected?

A. I am not sure that he did; I am not sure about that. Very likely he spoke of it. We sat in adjoining rooms.

Q. Did you ever heard anyone say who suggested Mr. Black's name as president of the applicant after the death of Mr. Hockenbeamer?

The Witness: What was that?

(Testimony of C. K. McIntosh.)

The Examiner: Read it, Miss Reporter.

(The question referred to was read by the reporter as above recorded.)

A. No, I never did.

By Miss Calkin:

Q. You don't know, then, whether Mr. Black was nominated by North American representatives on the applicant's Board?

A. Yes, I do; yes, I know he was not.

Q. Well, what do you know about his selection?

A. I know those directors down there and North American couldn't get a nomination through them with a cold chisel.

Q. So that it is solely by reason of the fact that you [939] are well acquainted with the other members of the Board that you believe that Mr. Black's name was suggested by the local directors?

A. Oh, I know it was.

Q. Did you ever hear any discussions at the time you became director or immediately prior thereto as to whether or not prior to the election of Mr. Black, the directors had received from him any assurances as to what his future attitude toward the North American Company would be?

A. No, I don't know that. I was not there at the time.

Q. Mr. McIntosh, do you think that it would be possible for the North American Company to ex-

(Testimony of C. K. McIntosh.)

ert a very substantial influence over the applicant's affairs if it exerted such an influence over Mr. Black even though none of its representatives attended Board meetings or had any other contacts with other directors or officers of the company?

A. I know it couldn't; I know it couldn't exert any influence over Mr. Black. In the first place I say I know that as I know a man. Even if it did, Mr. Black couldn't get to first base with that Board, if it did.

Q. You are not familiar with the extent of Mr. Black's contacts with the North American Company?

A. No, except to know that he was with them in California and in the East. [940]

Q. I mean since he has become president of the applicant?

A. No, he has not confided to me.

Q. As a director of the applicant, are you familiar with the reports which are submitted by the applicant to the North American Company?

A. No, not at all.

Q. Who recommends the declaration of dividends to the Board?

A. Who recommends them?

Q. Yes, sir.

A. They are recommended almost in all cases if the earning status of the company is such as to justify a dividend of a certain amount, it is recom-

(Testimony of C. K. McIntosh.)

mended by the management and agreed to or not by the Board, as the case might be, but it is determined, of course, by the condition of earnings and the need.

Q. Have the dividends on applicant's common stock been increased or decreased since you became a member of the Board in 1935?

A. I don't recall that they have; it may have been possible; yes, it may have been possible.

Q. I believe the record shows that they were increased in the third quarter of 1936, from 6 to 8 per cent. [941]

A. Very likely they have.

Mr. Phleger: Fourth quarter in '36.

The Witness: That is all based upon the ability to pay on them; that is what it amounts to. It is quite possible.

By Miss Calkin:

Q. At the time of the increase do you recall whether or not Mr. Black made any statement as to what North American's attitude was?

A. I am sure he didn't; I would remember that if he had.

Q. Do you recall the financing of the applicant which occurred in the spring of 1936, at which time the applicant sold a 90 million dollar bond issue to a syndicate headed by Blyth & Co.?

A. Yes.

Q. Are you acquainted with the fact that the 1935 financing of the applicant had been headed

(Testimony of C. K. McIntosh.)

by a syndicate managed by the banking firm of Lazard Freres & Co.?

A. In 1936, you say?

Q. No, in 1935.

A. '35? That was probably before I was a director. I was a director in December of '35.

Q. Well, in connection with the first issue of the applicant in 1936, which was the 90 million dollar bond issue—— A. Yes, sir.

Q. Do you recall any discussions before the Board [942] relating to the change of syndicate manager from Lazard Freres & Company to Blyth & Co.?

A. Oh, I have no doubt there was. I don't know if it was exactly called a change. As I recall it, Blyth & Co. were not syndicate managers at one time; they were participants in syndicates, and it is only just a matter of considered easiest policy to handle a thing through one or more channels. No, I don't recall any discussions about it at all; it would be a normal thing.

Q. Are you acquainted with Mr. Blyth?

A. I beg your pardon?

Q. Are you acquainted with Mr. Charles Blyth?

A. Very well.

Q. Did Mr. Blyth ever approach you as a member of applicant's Board in an effort to get the leadership of applicant's financing?

A. Never, never spoke to me about it.

(Testimony of C. K. McIntosh.)

Q. Did any representatives of Blyth & Co. approach you for such purpose?

A. No, no, never.

Q. Do you recall who recommended the name of Blyth & Co. as manager of the 1936 syndicate?

A. No, I don't. I suppose it was the—probably it came from the executive committee; I don't know that it was. [943] I wouldn't have remembered the change, if you call it a change. I don't remember it.

Q. You never were familiar with what might be termed a struggle on the part of Blyth & Co. to get the leadership of the applicant's financing away from Lazard Freres & Company?

A. No, I don't know anything about that at all, no.

Q. Do you know where the negotiations with respect to that financing were carried on?

A. You mean the financing of the 1936 bond issue?

Q. Yes.

A. Carried on, I suppose, in San Francisco.

Q. Do you know whether or not North American had any participation in the selection of Blyth & Co.?

A. I am sure they had none. I never heard of them having a suggestion of a voice in it.

Q. Do you know how Dillon Read & Co. got

(Testimony of C. K. McIntosh.)

a substantial participation in the 90 million dollar issue?

A. I haven't the faintest idea unless because they were able to distribute.

Q. Did you play any part in the determination of the syndicate membership as made up?

A. No, no. Oh, it might have been talked of at the Board, that is all. What we were interested in was the soundness of the group and the ability to distribute the [944] securities. We had no interest in any personal one of them at all.

Q. Would you look with more favor upon a syndicate formed to purchase the applicant's bonds which was headed by Blyth & Co. than one headed by Lazard Freres & Co.?

A. Only that Blyth & Co. is a local house and they are on the ground. They have their distributing facilities both here and in the East. They could probably—I don't know—I am not attempting to criticize or deprecate Lazard & Company's capacities; I don't know what it is.

Q. Are you acquainted with any of the persons associated with Lazard Freres & Company?

A. No, I am not. I think the last one is dead that I knew. What is his name, Herman? That big fellow that used to be out here in the Anglo Bank?

Q. Mr. Weeks?

A. No, this man was dead before you were born, I guess, a long time. (Laughter.)

(Testimony of C. K. McIntosh.)

He used to be a vice president or something in the Anglo Bank.

Mr. Phleger: Greenbaum?

The Witness: No, it isn't that. There were two brothers of them before you were born too.

By Miss Calkin:

Q. Connected with Lazard Freres & Company? [945]

A. He went to New York and was with Lazard Freres & Company for a while.

Q. Were you ever acquainted with Stanley Russell? A. Stanley Russell?

Q. When he was associated with the National City Company?

A. I don't recall; I may have been. Was he here or in the east?

Q. I think he was in the East.

A. I don't recall; I may have been.

Q. Do you know of no instance in which the North American Company has participated in any of the financial policies of the applicant or in the consummation of any of the refinancing plans of the applicant?

A. No instance of any sort.

Miss Calkin: I think that is all.

The Examiner: Any further questions?

(Testimony of C. K. McIntosh.)

Redirect Examination

By Mr. Phleger:

Q. Do you look upon Blyth & Co. as a California house?

A. We do. Maybe that is incorrect, because they have a large house in New York but we look upon them as a California house certainly. Mr. Blyth himself lives here; he is [946] the head of the house. He lives here.

Q. Other things being equal, would you prefer, as a director, to deal with a California house than with an eastern house?

A. Well, other things being equal, yes, but as director I would want to be assured that the house that we were dealing with was not only California but equally able to distribute the securities properly.

Q. That is connoted in "other things being equal?" A. Yes, I would.

Mr. Phleger: That is all.

The Examiner: Any further questions?

Miss Calkin: No further questions.

The Examiner: You may be excused, then. Thank you very much.

(Witness excused.)

We will have a short recess.

(Whereupon a short recess was taken, after which proceedings were resumed as follows:)

The Examiner: Mr. Wishon, I think you were about to be sworn.

No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Transcript of Record

In Four Volumes

VOLUME III

Pages 975 to 1472

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

Whereupon—

A. EMORY WISHON

was produced as a witness for and on behalf of the applicant and having been first duly sworn, was examined and testified [947] as follows:

Direct Examination

By Mr. Phleger:

Q. Will you please state your name and residence for the record?

A. A. Emory Wishon; Piedmont, California.

Q. How long have you lived in California?

A. Since 1889.

Q. Has your family lived here since that time?

A. That is right.

Q. Your father and your parents lived in California?

A. My parents moved to California in 1889.

Q. Before you took up your residence in Piedmont where did you live?

A. Fresno, California, immediately before that.

Q. And you lived in Fresno for many years?

A. I did.

Q. What companies are you an officer or a director of, in addition to the Pacific Gas and Electric Company?

A. San Joaquin Light and Power Corporation, Midland Counties Public Service Corporation, Valley Electrical Supply Company, Yosemite Portland Cement Company, Wishon Watson Company, Wish-

(Testimony of A. Emory Wishon.)

on Olive Company, The Twenty-One Company, and the LaHacienda Company. [948]

Q. The San Joaquin Light and Power Company and the Midland Counties Public Service Corporation are dissolved corporation, are they not? That is, their properties have been transferred to the Pacific Gas and Electric Company?

A. I am not sure about the dissolution of the corporations. The properties have been transferred to the Pacific Gas and Electric Company.

Mr. Bosley: The Midland Counties Public Service Corporation has been completely dissolved; the San Joaquin Light and Power Corporation has not yet been dissolved. The properties have been transferred to the Pacific Gas and Electric Company.

By Mr. Phleger:

Q. The Valley Electrical Supply Company is a subsidiary of the Pacific Gas and Electric Company?

A. 95 per cent of the stock is owned by the Pacific Gas and Electric Company.

Q. What business does it conduct?

A. An electrical merchandising and jobbing business in the San Joaquin Valley, operating stores in Bakersfield, and in Fresno.

Q. Is it a public utility?

A. I think it is part of a public utility now. For many years it was not considered a public utility property. [949] I think in 1932 it was included as a public utility property.

(Testimony of A. Emory Wishon.)

Q. It doesn't operate any public utilities?

A. No; strictly a merchandising company.

Q. And its business and properties are located entirely within the state of California?

A. Oh, yes.

Q. I call your attention to applicant's Exhibit No. 32. Will you from reference to it, state the number of shares of Pacific Gas and Electric Company stock which you own, and which are owned by corporations or persons affiliated with you?

A. I personally own 860 shares of Pacific Gas and Electric Company preferred, and 920 shares of Pacific Gas and Electric Company common.

My daughter, Mrs. Martha Jarrell, owns 107 shares of Pacific Gas and Electric Company preferred and 35 shares of common.

My son, now deceased, Albert Graves Wishon, owns 57 shares in his name of preferred and 51 common.

My son, A. Emory Wishon, Jr., owns 100 shares of preferred and 124 of common.

My wife owns 43 shares of preferred and 33 common.

Q. The corporations with which you are affiliated own [950] how many shares?

A. The Wishon Watson Company owns 4,100 shares of preferred and 2,700 shares of common.

The Yosemite Portland Cement Corporation owns

(Testimony of A. Emory Wishon.)

1,840 shares of preferred, and 1,000 shares of common.

That makes an aggregate of 11,970 shares.

Q. Are you substantially interested as a stockholder in the Wishon Watson Company and in the Yosemite Portland Cement Corporation?

A. I am.

Q. And you are the president of the latter company, are you?

A. President of both of them.

Q. When did your family first come to California? A. In the fall of 1889.

Q. Where did they locate?

A. They located in the little town of Tulare, in the San Joaquin Valley.

Q. Describe your business experience after leaving college.

A. Well, upon leaving college I came direct to the Coalinga oil fields and worked in the town of Coalinga, and spent most of the first year in endeavoring to promote a company to buy water from the east side of the valley to [951] supply water to the field. The water in the field was very limited in quantity and very bad in quality.

During that particular time we decided that the matter of boiler water would be a thing of the past in the near future as we thought that the oil wells could be operated by electricity and, as a result, in the fall of 1909, the Coalinga Water & Electric Company was formed, and purchased the

(Testimony of A. Emory Wishon.)

properties of the Bunting Iron Works known as the Coalinga Light and Power Company.

I managed that small property until August 10, 1910, when I was appointed assistant to the general manager in charge of the southern division of the San Joaquin Light and Power Corporation with headquarters in Bakersfield.

I remained in that capacity until 1913 when I was made assistant general manager of the San Joaquin Light and Power Corporation and the Midland Counties Public Service Corporation, and moved into headquarters at Fresno.

In 1920 my father was made Managing Director, that is, Vice-President and Managing Director, and I was made General Manager of the San Joaquin Light and Power Corporation, the Midland Counties Public Service Corporation, and the Fresno City Water Company.

I remained in that capacity up until the spring of 1925 when the Western Power acquired control of the San [952] Joaquin and Midland Counties group of properties and then continued on as general manager of that outfit until the fall of the same year, when the North American acquired control, but I was elected Vice-President and General Manager of the three corporations.

In the very early part of 1927—I will say at the time that the Western Power acquired control—I was made a director of the Great Western Power Company of California; and in the very early

(Testimony of A. Emory Wishon.)

spring of 1927 I was made Vice-President and General Manager of the Great Western Power Company of California, and that group of properties, also the other group that I had previously managed, and moved to San Francisco and remained in that capacity until 1930 when the properties were acquired by the Pacific Gas and Electric Company, the control of the properties, at which time I was made vice president, appointed vice president and assistant general manager of the Pacific Gas and Electric Company, vice president and assistant general manager of the Great Western Power Company, president of the San Joaquin Light and Power Corporation, and the Midland Counties Public Service Corporation.

The Fresno Water Company had been sold during the time the Western Power held control and before they delivered control to the North American Company. [953]

In 1939—I think it was in January—I was elected to the corporate vice-president and assistant general manager of the Pacific Gas and Electric Company, and in 1936, in October, I was elected a director of the Pacific Gas and Electric Company.

Q. Describe briefly the San Joaquin Light and Power Company, where it was located, and who were the persons primarily interested in it.

A. The San Joaquin Light and Power Company, Corporation, its history really starts with

(Testimony of A. Emory Wishon.)

the San Joaquin Electric Company, which was incorporated in 1895 by a man by the name of Seymour, and a man by the name of John S. Eastwood, who afterwards became quite a famous engineer.

They built a small plant of 1,600 kilowatts on the north fork of the San Joaquin River, about 41 miles above Fresno. They ran a transmission line to Fresno and built a distribution system in that town.

Shortly after they had gone into operation a group headed by a man by the name of Fulton G. Berry, who was the head of the gas company, and which they were competing with, obtained an injunction against their use of certain waters of the stream, and together with that, and a couple of dry years, in 1902 this San Joaquin Electric Company was in the hands of the receiver. [954]

At that time my father, representing William G. Kerckoff, Allen C. Balch, Abe Haas and Casper Kohn, acquired control from the Receiver of those properties, forming the San Joaquin Power Company.

That company's first job, the San Joaquin Power Company, was to put the properties back into condition. They had been very badly neglected. They built a very small steam plant in Fresno for relief and started another hydro-plant slightly higher up on the same tributary of the San Joaquin River, and generally expanded the system in and around Fresno.

(Testimony of A. Emory Wishon.)

In 1905, 1905 or 1906—I believe it was 1905—the San Joaquin Light and Power Company was incorporated, which permitted them to obtain more capital. It acquired the property of the San Joaquin Power Company, continued to expand the system, and to complete its plant in 1906; and also started the construction of a reservoir higher up on the stream to supply storage water to the plants. That reservoir was completed in 1910.

In 1910 the San Joaquin Light and Power Corporation was formed to acquire the properties of the San Joaquin Light and Power Company, which were operating and distributing power in and around this town of Fresno; to also acquire the properties of the Merced Falls Gas and Electric [955] Company, which was then generating an amount of hydro-power about 17 miles up on the Merced River above Merced, and supplying electricity to the town of Merced; and to acquire the properties of the Power Transit and Light Company, which had a small plant on the Kern River, and which was supplying electricity to the town of Bakersfield, and also operating an artificial gas system and a small street railway system.

From that time on it was a matter of expansion, both in production, plant, transmission and distribution, up until the time in 1925, the spring of 1925, when the Western Power Corporation acquired control from this particular group.

(Testimony of A. Emory Wishon.)

Q. Describe the transaction by which the Western Power Corporation acquired—strike that out.

What was the Midland Counties Public Service Corporation?

A. The Midland Counties Public Service Corporation started with the purchase of the Bunting Plant that I previously mentioned, Coalinga Light and Power Company. I think it was in 1914 that the name of Coalinga Water and Electric Company, which the company first incorporated to purchase this plant, was changed to the name of the Midland Counties Public Service Corporation.

That corporation, the Midland Counties Public Service Corporation, after purchasing this first plant, or its predecessor, the Coalinga Water and Electric Company, built [956] a transmission tie line of about 40 miles in length, from the little town of Lemoore over to the Coalinga field, and purchased power wholesale from the San Joaquin Light and Power Corporation, and distributed retail to the customers.

In 1914 it purchased a bunch of properties on the Coast. I think it was the Midland Counties Company, or some name very similar.

The Examiner: Midland Counties Gas and Electric Company.

The Witness: That is right;—which operated properties, gas and electric, in the town of San Luis Obispo, which operated the electric properties in Santa Maria.

(Testimony of A. Emory Wishon.)

It also purchased the Paso Robles Water and Light Company, which was a light and water company in the town of Paso Robles and a small distribution system, water distribution system, and an independent electric system of a couple of hundred horse power known as the Russell Robinson Water and Electric Company, in the town of Arroyo Grande.

The company's history is one of expansion. It now covers the western portion of Fresno County, the southern portion of Monterey County, a small portion of San Benito County, San Luis Obispo County, and Santa Barbara County [957] down as far as, well, fifty miles north of Santa Barbara City.

They have sold their gas properties and their water properties in the interval, and it is now strictly an electric utility company.

Q. Its properties are now operated by the Pacific Gas and Electric Company?

A. Yes. The property is now owned by the Pacific Gas and Electric Company.

That property, I might say, was controlled from the beginning and throughout its history by the same group of men I named as being the engineers of the original San Joaquin Light and Power Company and Corporation.

Q. Those individuals continued, did they not, to be the principal owners of the San Joaquin

(Testimony of A. Emory Wishon.)

Company right down until 1925 when the Western Power Corporation acquired their securities?

A. That is correct.

Q. Will you describe briefly the transaction in 1925 whereby the Western Power Corporation acquired the stock control of the San Joaquin and the Midland Company?

A. Well, in 1925 the Western Power Corporation began negotiations—I think it was in 1924, late 1924,—for the control of that group of properties. Negotiations were [958] carried on largely between Mr. H. P. Wilson and A. C. Balch; Mr. Wilson representing the Western Power Company and Mr. Balch representing the San Joaquin and Midland Counties group.

Finally an agreement was entered into on November 29, 1924, and it was consummated and the properties delivered, I think, in February of 1925.

The Balch and Kerckhoff interests held the major part of the stock that was delivered. However, there was two other groups. Incidentally, both of these groups had to a large degree received their stock holdings in exchange of stock back in 1910 for the properties of the Power Transit and Light Company.

These other two groups were known as Gordon Blanding and Al T. Haggin. On the delivery of stock the Balch-Kerckhoff group delivered 32,707 shares of 7 per cent preferred and 79,980 shares of common.

(Testimony of A. Emory Wishon.)

The Gordon Blanding group, which included Louis T. Sharon and Harry L. Tevis, delivered 5,793 shares of preferred and 7,291 shares of common.

There was a small block of stock owned by the Mercantile Trust Company, a California corporation, of 332 shares of common, which was delivered.

Al T. Haggin, of New York City, delivered 6,250 [959] shares of preferred, and 6,333 shares of common.

That made a total of 44,750 shares of preferred which were delivered, and 95,936 shares of common, or approximately 53 per cent of the outstanding stock of the company as of that date.

Q. So that early in 1925 the Western Power Corporation was the owner of the majority of the stock of the San Joaquin Company and the Midland Company, is that correct?

A. Yes, sir. I might say that there were 10,000 shares of common stock of the Midland outstanding, all in the hands of this group—I had some of it, but I was part of the group through my father—and 5,000 shares of preferred, and that was all delivered.

Q. The Western Power Corporation at that time was also the owner of the majority of the stock of the Great Western Power Company of California, the operating company, was it not?

A. That is right.

(Testimony of A. Emory Wishon.)

Q. What took place immediately after the Western Power Company acquired control of the San Joaquin and Midland Companies with respect to their method of operation and the management?

A. Outside of rather intimate contacts between the [960] two organizations, there was no immediate change of personnel in the organization. However, the directors, there were a number of directors of the North American Company, I mean of the Western Power and Great Western companies on the San Joaquin Board, and I was made a director of the Great Western Power of California Board of Directors.

The first real co-ordination, you might say, of operations, was almost immediately started in the building of a transmission line from the Brighton sub-station, just near, at the edge of Sacramento, to the Wilson sub-station at the northern part of our territory at Merced, tying physically these two properties together, and making available by that tie-line the production resources of each of the properties to the other.

Q. Was there any substantial benefit achieved through tying those two properties together?

A. Very great. The tie-line that was built was immediately very profitable to both companies. It made it possible to make available the resources of one company to the other. At a time there would be a demand for power on one company and it had a lack of facilities, we will say, and there was

(Testimony of A. Emory Wishon.)

adequate power supply on the other, it could be taken over the lines to the benefit of both companies. [961]

This tie-line was worked out on the basis of a division of the savings. As I recall it—I think I am substantially correct—the tie-line cost slightly less, that is, the first circuit and the line, was $17,500,000.00. Each of the companies contributed 50 per cent of the fixed charges, although the line was built in the name of the Great Western Power Company. [962]

In the first year of its operation the peak delivery to the San Joaquin Light & Power Corporation was 42,000 kilowatts.

The amount of money paid to the Great Western Power Company that year, and naturally the same amount was saved by the San Joaquin Light & Power Corporation, was $113,204.

The formula worked out for that line—I think Mr. Black and myself get the credit for that—was one of those formulas that simply works. You can't lose by it because you divide the savings and it is less investment cost than the ordinary standby plant; that is the fixed charges are less per year. Yet it makes available a certain amount of capacity from idle equipment or idle water. For instance, we will have water going down the river on one of our grants at water sheds on the San Joaquin, we will say, past the stream flow plant in quantities that cannot be used. We may have a plant we can

(Testimony of A. Emory Wishon.)

operate at 100 per cent capacity and yet have no use for it on the San Joaquin Power.

The Great Western, with its reservoir up here at Almanor, could back off on plants being operated by stored water and conserve that stored water for future use.

We even get down to the fine points over the years of operating the most efficient steam plant, the ones that use the least fuel, in dividing the difference, what the fuel would cost at the plant on the opposite system, and what it [963] did actually cost.

Of course, the company producing the power is paid its out-of-pocket cost and the balance of the saving is divided. It was a very, very favorable arrangement.

Q. Now, later in 1925 did the North American Company acquire control of the Western Power Company?

A. It was in September or November, I think; somewhere in there, of that same year.

Q. State what you know of that transaction?

A. I knew little of that transaction until after it had taken place. In fact, I knew nothing of it when the North American purchased Western Power control until the deed was done.

Q. Now, after North American acquired the control of Western Power Corporation, which at that time had the control of the Great Western Power Company of California, of the San Joaquin Company, and of the Midland Company, what changes

(Testimony of A. Emory Wishon.)

took place in the method of operations and in the executive personnel?

A. Well, I remember that the Board of Directors were increased to 13 and 4 members of the Board were North American officers or directors.

As I say, I moved up here in 1927 and the management of all the properties were placed under one management.

From that time on we coordinated certain job, such as [964] general sales manager. We continued the operation of our tie line. We had one publicity man, one advertising department that covered the general western properties.

Q. Was Mr. Black an officer of the Great Western Company of California and also of the Western Power Corporation?

A. I don't know about the Western Power Corporation.

Q. He was of the Great Western Power Company?

A. He was on both the Great Western Board and the San Joaquin Board.

Q. Do you recall when that was?

A. It was very early in 1927, if I am not mistaken.

Q. That was about the time that you—

A. (interposing) I came up along in November to break in on the desk about six weeks ahead of time.

Q. And he then went East?

(Testimony of A. Emory Wishon.)

A. He then left for the East.

Q. Did you succeed to the position which had previously been held by Mr. Black? A. I did.

Q. When Mr. Black went East he became a vice-president of the North American Company?

A. That is correct.

Q. Describe the relationship which existed between the Great Western Power Company of California, the San Joaquin [965] Company, the Midland Company, and the North American Company during the period 1927 to 1930 when the Pacific Gas and Electric Company acquired the North American holdings in those companies?

A. Well, these various California corporations were naturally operated to a degree independent, at least corporately so, but they had different Boards of Directors, and different stockholders. On the boards of each of these corporations, however, were four North American directors; Mr. Black, by the way, being one of the members of the Board in each instance.

There was a very close contact with the North American officers in New York. Reports on various subjects were continually forwarded back there.

We had certain reports made annually, and certain semi-annually, monthly reports, and even daily reports on output. We were continually in contact with the North American office, and operated the properties in the most efficient way possible, taking advantage, so far as possible, of local joint opera-

(Testimony of A. Emory Wishon.)

tions, at the same time having to keep our rate basis and our operating expenses separately because these were separate corporations and under the jurisdiction of the California Railroad Commission and separate stock ownerships.

Q. Did the North American Company supervise and [966] review your construction budgets?

A. Yes. I made up a little list to help answer that question, which I thought was coming.

We had the following annual reports that I can recollect; The construction budget was one of the reports that they did watch very closely; and also the general annual report on automobile operating cost, and so forth.

We made annual and semi-annual reports of operating budgets; a quarterly consolidated balance sheet which was a consolidation of the balance sheet, simply a composite sheet for the various western properties.

Monthly we submitted the construction budget approval list.

We did not wait for the North American's approval on budgets, items that appeared in our annual or semi-annual budgets, but in order to permit them to know what our cash requirements would be we kept them informed at the end of each month as to what expenditures had actually been approved locally, and the progress made on these various items of the budget.

(Testimony of A. Emory Wishon.)

We had a current rate base report showing our rate basis kept in connection with rate fixing and rate analysis of the various properties.

We had our financial and operating reports monthly; new business reports; personnel reports; repurchase stock reports; revised operating budget estimates; standardized [967] statistical reports; tie line account, which we have been talking about; cash requirements; and the Western Power Corporation condensed income account and balance sheet—that is monthly.

Weekly we sent them precipitation reports; the weekly cash balance statements; and, as I say, daily we sent them our output report showing the trend, the load and the business.

I might say also that in addition to that once each month I wrote what is known as a general manager's letter to the general manager of the North American Company commenting on anything of specific interest, items of specific interest in any of these particular reports that I wanted called to their attention.

Q. Mr. Wishon, did the North American Company have to approve your general budgets before they were deemed to be authorized?

A. The general budgets were authorized by the Board of Directors of the respective companies first, but as far as I was concerned, yes, the North American approved the general budget before I deemed it finally authorized.

(Testimony of A. Emory Wishon.)

Q. And with respect to each of the items that you have stated were the subject of your report, did the North American exercise a constant supervision? A. They did. [968]

Q. Were you in constant communication with the North American? A. Absolutely.

Q. By letter, telegram and otherwise?

A. Correct; and making a couple of trips there each year, and occasionally having some of the boys visit the western job.

Q. Officers of the North American Company frequently visited and inspected the properties of the companies, did they?

A. Well, there was generally someone out here once or twice a year. I was generally East once or twice a year.

Q. When you went East on those trips were the affairs of these companies discussed in detail with you? A. Very thoroughly.

Q. What supervision did the North American Company exercise with respect to the finances of these companies?

A. As far as I was concerned I was on the operating end largely and the supervision of the financing was almost entirely in the hands of the North American Company.

Q. They furnished the cash requirements in excess of current receipts, did they?

A. At the time of the sale to the Pacific Gas and Electric Company I notice there were $19,000,-

(Testimony of A. Emory Wishon.)

000, odd dollars, of open accounts on the books owing to the North [969] American Company by the western companies.

Q. Is it a fact that during the period in question, 1927 to 1930, that there was an open account between the North American and these subsidiary companies? A. It is.

Q. Fluctuating from time to time?

A. From time to time and generally growing larger.

Q. So that at the time the Pacific Gas and Electric Company acquired the securities in this company the open account amounted to some $19,000,000? A. That is correct.

The Examiner: That is, an obligation of the operating company to the North American?

The Witness: That is correct.

By Mr. Phleger:

Q. With respect to engineering and construction programs and problems, were these submitted to the North American Company before they were authorized?

A. Not entirely, but on any major ones to some degree. The North American Company, in addition to its direct supervision, there were a number of committees of subsidiary companies and the North American Company, such as the Rate Committee, New Business Committee, the Engineering Committee, and such, and our men attended those

(Testimony of A. Emory Wishon.)

meetings from [970] time to time, as did the engineers, rate men, and the new business men of the other subsidiaries. On those occasions the North American—we had the benefit, we will say, of North American subsidiary advice, and from the North American Company itself as to their judgment; although the North American Company had no engineering staff or no advisory service particularly in that line, construction advice.

Q. Do I understand from your statement that the North American Company would promote the interchange between their subsidiaries, by way of meetings and otherwise, an interchange of information, advice and experience with respect to engineering matters, rate matters and so forth?

A. Yes.

In addition to that, we received each month what might be called a summary report of unit cost of operation, showing how the western companies compared with costs of other companies in other parts of the country, such as per line mile costs, kilowatt hour costs, average price at which electricity was being sold, and so forth, which was very helpful and very stimulating. It was a challenge at all times.

Q. What men in the North American organization did you have your chief contacts with?

A. Mr. Edwin Gruhl and Jim Black and Mr. Dame. [971]

(Testimony of A. Emory Wishon.)

Q. Besides those men did you know any other men in the North American organization?

A. Yes, a great many of them. I knew Mr. Dame, Mr. Doolittle, Mr. Gruhl, Mr. Black, Mr. Fogarty, Mr. Freeman, and others on the staff.

Q. Did you yourself attend any meetings of these committees of the North American subsidiaries?

A. I think I attended a committee meeting of the sales group one time in Cleveland, but that is the only one I personally attended.

Q. But other members——

A. (interposing) Other members, Mr. Euler, who was then general superintendent, really chief engineer of the Great Western Power Company of California, attended, Mr. Al J. Moore, executive engineer of the San Joaquin Light & Power Company, A. M. Frost, and several others attended such meetings. I am sure they did over that period.

Q. Were these subsidiary companies charged any fees by the North American Company for the services which it rendered to them during this period of 1927 to 1930? A. Yes.

Q. Can you read into the record the annual amounts so charged?

A. In 1927 there was a total charge, which is listed as including a portion of salaries of the officers and [972] employees in the North American Company engaged in the work of Western Power Corporation's subsidiaries, travelling expense, telephone and telegraph expense, a total of $16,898 to

(Testimony of A. Emory Wishon.)

the San Joaquin Light & Power and Midland Counties jointly.

That same year, for the same items there was a charge of $19,394.31 made to the Great Western Power Company of California.

The following year $24,573.55 was billed to the San Joaquin Light and Power Corporation and $26,039.50 to the Great Western Power Company of California.

In 1929 the San Joaquin Light was billed for $26,624.52 and the Great Western Power Company of California $28,192.39.

For the period from January 1, 1930 to May 31, 1930 the San Joaquin was billed $16,540.82 and the Great Western Power Company of California $17,270.77.

Q. Those charges ceased did they not, on May 31, 1930? A. That is correct.

Q. In 1930 the Pacific Gas and Electric Company purchased from the North American Company its holdings and those of the Western Power Company, and the San Joaquin Company, the Midland Company and in the Great Western Company, did it not? A. That is correct. [973]

Q. Will you state briefly what you know of that transaction?

A. I know they received mainly 125,000 shares of common stock of the Pacific Gas and Electric Company for their interest in the properties that

(Testimony of A. Emory Wishon.)

we have been discussing, and for writing off a $19,000,000 open account on the North American's books that had been owed to that company by the California subsidiaries. I have the amount—$19,180,776.

Q. That amount that you have just stated, Mr. Wishon, was owed by the subsidiary companies to the Western Power Corporation? A. Yes.

Q. State what took place with respect to the method of operation and the personnel of these companies following the acquisition of their majority stock by the Pacific Gas and Electric Company?

A. The Pacific Gas and Electric and the Great Western Power Company had been in direct competition, we will say, in Sacramento, Northern Sacramento Valley, or a portion of it, in the East Bay area, in the North Bay area, and in the City and County of San Francisco. There was a great deal of duplicate personnel. There were two city offices, two cashiers, two groups of salesmen working the same street, ringing the same doorbells. It was good tough competition. [974]

Immediately following the acquisition by the Pacific Gas and Electric Company—I say "immediately following", I mean in the next few weeks—the general office of the great Western Power Corporation, in fact, all of the western subsidiaries were moved down to 245 Market Street, and we immediately began the study of merging personnel and properties, with the result that over a reasonable

(Testimony of A. Emory Wishon.)

period there had been a number of hundred duplications eliminated in the way of jobs.

Also the properties were physically tied together, the more efficient plants of the combined properties were used and very decided savings made in operations.

Then, I think it was in—well, a year or so after they acquired the properties, a second circuit was run from below the sub-station, which is below Stockton, where the Tiger Creek lines cross the tie line that I previously mentioned, and a second circuit built into the San Joaquin Valley, adding to the capacity of that line, and our tie line operations and benefits were increased very, very materially.

Q. When were the physical properties of the Great Western Power transferred to the Pacific Gas and Electric Company?

A. I don't remember.

Q. Was it about in 1936, would you say?

A. That is about right. [975]

Q. But shortly after the 1930 transaction the properties of the Great Western for all—

A. (Interposing) For all practical purposes were taken over by them.

Q. (Continuing)—taken over and managed by the Pacific Gas and Electric Company?

A. That is correct.

Q. Who determined the method of taking over and the disposition of the personnel?

(Testimony of A. Emory Wishon.)

A. Mr. P. M. Downing, of the Pacific Gas and Electric Company.

Q. Now, with respect to the San Joaquin and Midland properties, what became of them?

A. The Midland Counties and the San Joaquin properties were quite remote from these properties. There was no competition and no duplication, as far as the Pacific Gas and Electric Company was concerned. In fact, for many years, both of those companies operated without competition. There was a time, in the early days, when the San Joaquin had a competitive territory in and around Tulare County and part of Kings, where the Southern California Edison operated what is known as the old Mt. Whitney system, built originally by them, and became a part of the Southern California Edison Company system. After that battle had gone on far [976] enough, the two companies went before the California Railroad Commission and asked for permission to exchange certain properties, in what we might call No Man's Land, in the fighting territory, and the territory was defined and the properties of one company were exchanged for properties of the other, and the customers of one company for customers of the other, until they got that fight out of the way.

As a result that territory was absolutely clean of competition, and it was almost a unit within itself, pretty well removed from the Pacific Gas territory, tied in, of course, with the tie-line, and there wasn't

(Testimony of A. Emory Wishon.)

the same opportunity for a saving in personnel on that property that there was in the Great Western Power Company.

Q. How long was it before the physical properties of the San Joaquin and Midland Companies were transferred to the Pacific Gas and Electric Company? A. (Pause.)

Q. 1938?

A. I think it was in 1938. I was about ready to say that—before the actual transfer was made.

Q. But immediately after the 1930 transaction was consummated, the Pacific Gas and Electric Company assumed control and supervisory management over the San Joaquin and [977] Midland properties, did they not?

A. That is right.

Q. And achieved whatever economies it was possible to achieve? A. Yes.

Q. You continued the operating head of those companies, did you not? A. I did.

Q. Did you move your office right into the office of the Pacific Gas and Electric Company at San Francisco? A. Yes.

Q. Did the Great Western Company and the San Joaquin and the Midland Company sever all relationship with the Western Power Corporation, and the North American Company immediately upon the consummation of the 1930 transaction?

A. Oh, yes, immediately.

(Testimony of A. Emory Wishon.)

Q. Thereafter they had no relations or communications with it?

A. No relation with it. We were a part of the Pacific Gas.

Q. And ceased, and terminated all connections and communications with the North American Company?

A. Yes, sir. To be specific, I think my last communication I ever had with the North American Company on a subject was a couple of weeks after the deal had been [978] consummated, when Mr. Gruhl was on the Pacific Coast attending a convention, and I talked to him at that time about trying to use his influence in connection with placing certain men, or certain policies, giving an equal break to Great Western and San Joaquin men in this merger. I was told by him that he couldn't take any position in the matter. I think that was after I was on the P. G. & E. Payroll about two weeks, that was about the last contact, or discussion of subjects that I had.

Q. Did he tell you in substance that all of those matters were for the decision of the Pacific Gas and Electric Company and that he was not in a position to interfere in any way with its decision, is that a fair statement?

A. I think more than that. I had been arguing for that plan to be incorporated as a part of the agreement involving the transfer. I had written

(Testimony of A. Emory Wishon.)

about it, and I had phoned about it, and prayed about it, and I got no help.

I had already gotten a reply from Mr. Gruhl saying he couldn't step into the picture, but I wanted to take another shot at it, and I did, and I got the same reply.

Q. Since 1930 what contacts, if any, have you had with the officers or agents of the North American Company?

A. That is since the properties were acquired by the Pacific Gas and Electric Company?

Q. Yes. [979]

A. I was in New York, I think, the following year, or at least I was in Atlantic City attending a convention, and I visited the North American office at that time, and most all of my old friends. Since that time I have seen Mr. Fred Doolittle on several occasions, and Mr. James Fogarty at the Grove on several occasions.

Q. Did you discuss Pacific Gas affairs with these men that you have mentioned since Pacific Gas and Electric acquired the properties?

A. Only in a general way; nothing specific.

Q. They were friendly meetings?

A. "How is everything going?"

Q. Yes. Have you had occasion to have any telephone or letter communications with them on Pacific Gas and Electric Company matters.

A. Not that I recall at the moment. I had a telephone call here when Mr., I think it was from

(Testimony of A. Emory Wishon.)

Mr. Fogarty or Mr. Doolittle, when Ed. Gruhl passed away. I think that is about the only telephone conversation I recall at the moment.

I have had personal letters from Mr. Doolittle, who has a son here in Cal-Tech., and he has been on the Coast several times since his retirement.

Q. But you have had no communication with respect to P. G. & E. business matters, have you?

[980]

A. Not that I recall.

Q. Since these properties, or the control of these properties, was acquired by the Pacific Gas and Electric Company from the North American Company in 1930, have you ever observed anything indicating that the Pacific Gas and Electric Company is or was controlled, directly or indirectly, by the North American Company, or that the management or the policies of the Pacific Gas and Electric Company are, or were at any time since that date, subject to a controlling influence, directly or indirectly, by the North American Company?

A. No.

Q. If the North American Company attempted to, directly or indirectly, control or to exercise a dominating influence over the management or policies of the Pacific Gas and Electric Company, would you, as a director of that company, oppose such an attempt?

A. I certainly would.

(Testimony of A. Emory Wishon.)

Q. Do you think that the other San Francisco directors of the Pacific Gas and Electric Company would also oppose such attempts?

A. I know they would.

Q. In the event that the North American Company were to attempt to control or exercise a dominating influence over the management or policies of the Pacific [981] Gas and Electric Company, do you think it would be able to do so?

A. No; positively not.

Q. If the North American Company attempted to secure sufficient proxies to obtain a majority of the representation at a stockholders' meeting of the Pacific Gas and Electric Company, and such an attempt were resisted by the management, and the San Francisco directors, do you think that the North American Company would be successful in its attempt?

A. I don't think they would have a chance.

Q. Will you state the reasons which you have for your last answer?

A. I think the Pacific Gas and Electric Company over the years has been considered and has been recognized as being strictly a California corporation, managed by local men who are in touch with the local problems, and have the feel of the public, and there would be a great resentment of having Wall Street step in and try to take control of anything that had been locally and very satisfactorily managed over all these years. I don't think

(Testimony of A. Emory Wishon.)

they would even have a start.

Q. During the time that the San Joaquin Light and Power Company was independently operated, that is, before its control was acquired by the Western Power Company, did [982] it sell a great deal of its preferred stock to residents of the territory in which it operated?

A. Yes. At one time, if I am not mistaken, it had 14,000 stockholders, that small company.

Q. And have a great many of those stockholders since become stockholders of the Pacific Gas and Electric Company by the exchange of their stock in the San Joaquin Company for stock in the Pacific Gas and Electric Company? A. They have

Q. Was it advantageous from an operating standpoint for the Pacific Gas and Electric Company, in 1930, to acquire not only the control of the Great Western Power Company, but also the control of the San Joaquin Light and Power Company?

A. Yes. It is to the best interest of the company and the customers.

Q. A question was asked of another witness, why the Pacific Gas and Electric Company would be interested in 1930 in acquiring the San Joaquin Light and Power Company, as well as the Great Western. What have you to say in that respect?

A. In the first place it is a rattling good company, if I happen to say so. It had a territory down there of 9,000 square miles. The possibilities of developing hydro and storage are very much bet-

(Testimony of A. Emory Wishon.)

ter on the northern system, [983] particularly the system of the Great Western. There is another situation that is very favorable to acquisition, and that is the matter of the peak loads.

For instance, the old Great Western peak was a summer peak serving largely a metropolitan load. The San Joaquin peak used to come in the morning of a summer time on account of the irrigation load. By combining the two it made available more idle plant capacity, the effective use of a great deal more idle plants.

Q. Now, the advantages that accrued from the original bringing together of the San Joaquin and Great Western properties continued, did it not, when those properties were acquired by the Pacific Gas and Electric Company?

A. Absolutely; yes.

Q. So that the same benefits that caused the properties of the San Joaquin and the Great Western originally to be brought together existed at the time that the Pacific Gas and Electric Company had its transaction with the North American Company?

A. Yes; and will continue to exist for many years in the future.

Q. As a matter of fact, does the San Joaquin system serve as a link to connect up the company operating in southern California with the Pacific Gas and Electric system? [984]

(Testimony of A. Emory Wishon.)

A. Yes. The San Joaquin is at the present time tied in with the Southern California Edison Company at two points; the principal one being at Magondun, south of Bakersfield, and has been receiving for the past several years, 75,000 kilowatts of capacity from that company.

Just recently the Pacific Gas and Electric Company has signed an agreement for the delivery from the Southern California Edison Company to the Pacific Gas and Electric Company, of 150,000 kilowatts for the years 1942, 1943 and 1944, and has an option on 100,000 kilowatts for the year of 1945.

I might say that since the P. G. & E. have acquired the San Joaquin Light and Power Company's properties, there has been no increase in the productive plant on the San Joaquin system, and that the power supplied to meet the demands of that system comes from the generating plants that were originally there at the time of the acquisition, plus the power delivered over this tie-line, plus the power that comes from the Southern California Edison Company.

Q. The fact that the San Joaquin properties are owned by the Pacific Gas and Electric Company has made it possible, has it not, to much more efficiently generate the power which is used on that system? A. Very much more.

Q. If the San Joaquin Company were an independent [985] company and forced to generate in its own territory the power required to serve that

(Testimony of A. Emory Wishon.)

territory, that could only be done at a much greater cost, is that right?

A. That is correct. Your hydro development in the north is much cheaper per kilowatt than the remaining hydro development along the Sierras and in the San Joaquin Valley.

Mr. Phleger: I think that is all.

The Examiner: Do you want to start your cross examination? It is now 20 minutes after four. Do you want to begin your cross examination or defer it until Friday morning?

Miss Calkin: If I start now I won't get through until after 5:00.

Mr. Phleger: Off the record.

The Examiner: Off the record.

(Remarks off the record.)

The Examiner: On the record.

We will recess now until 10:00 Friday morning, and then at the close of the Friday session we will recess until Monday.

(Whereupon, at 4:20 p. m., an adjournment was taken to Friday, November 22, 1940, at 10:00 a. m.) [986]

The Examiner: I think Mr. Wishon was on the stand at the time we recessed.

Will you resume the stand, Mr. Wishon?

(Testimony of A. Emory Wishon.)

I think Mr. Phleger had completed his direct examination.

Mr. Phleger: Yes.

A. EMORY WISHON

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination

By Miss Calkin:

Q. Mr. Wishon, do I correctly understand your testimony that in the fall of 1925 you were general manager of the San Joaquin Light & Power Company, the Midland Counties Public Service Corporation and the Great Western Power Company of California?

A. No. I was general manager and vice-president of the first two.

Q. Of the first two?

A. Yes. I did not become general manager of the Great Western Power Company until 1927.

Q. Who was general manager of the Great Western Power Company of California in 1925?

A. James B. Black.

Q. He was general manager at the time the North American [988] Company acquired its interest in the Western Power Corporation?

A. That is correct.

(Testimony of A. Emory Wishon.)

Q. Then in 1927 you became general manager of all three of the companies?

A. That is correct.

Q. At the time Mr. Black went to New York?

A. That is correct.

Q. Was your father still interested in the San Joaquin Light & Power Company in 1925 at the time control of that company was acquired by the Western Power Corporation? A. Yes.

Q. Did the acquisition of that control involve the exchange of stock of the San Joaquin Company for stock of the North American Company, or of the Western Power Corporation?

A. For stock of the Western Power Corporation and for cash.

Q. Was your father also interested in the Midland Counties Public Service Company?

A. Yes.

Q. So that upon the acquisition of control of those two companies by the Western Power Corporation your father had a substantial interest in the Western Power Corporation?

A. Not a substantial interest.

Q. He was a security holder?

A. He was a security holder. [989]

Q. Now, what happened to the Western Power Corporation after the securities of its three operating subsidiaries were acquired by the Applicant?

A. I don't know.

(Testimony of A. Emory Wishon.)

Q. Do you know whether or not your father still owns securities of the Western Power Corporation?

A. No, he does not. My father is deceased, but the Estate Company has no securities of the Western Power Corporation.

Q. Does it have securities of the North American Company?

A. It does. I think I can give that to you. The Wishon Watson Company, which is the Estate Company, holds, that is, purchased 650 shares of stock in the North American Company by purchase in 1930, and has acquired since that time additional shares as dividends and today they hold 959 shares of North American stock.

Q. What disposition was made of the securities of the Western Power Corporation?

A. I think we sold them.

Q. In other words, you did not own them at the time Western Power Corporation was dissolved in 1936? A. I can't tell you.

Q. If the North American Company distributed its securities, or its stock to the stockholders of Western Power [990] Corporation upon the dissolution of Western Power Corporation in 1936, the Estate Company of which you speak did not receive stock of the North American Company?

A. That is apparently correct; yes.

Q. Do you, or the Estate Company, own any of

(Testimony of A. Emory Wishon.)

the securities of the subsidiaries of the North American Company? A. We do not.

Q. What is the present extent of the holding of yourself and the Estate Company in the North American Company?

A. I own no North American stock; no member of my immediate family owns any North American Company stock. The Wishon Watson Company owns 959 shares of North American stock.

Q. Does it own any of the debentures of that company? A. No, it does not.

Q. Now, who is this Mr. Wilson that you spoke of as being one of the persons that carried on the negotiations between the Western Power Corporation and the San Joaquin?

A. Mr. Wilson was president of the Western Power Company, and had been associated with that company from its inception, according to Western Power history. I had never met Mr. Wilson, except on one occasion, I think, until Western acquired control of the San Joaquin and Midland Counties properties.

Q. Was he a westerner or an easterner?

A. I think Mr. Wilson, from what he told me, spent his early life up in around Oregon; then for a time he was in [991] San Francisco with some bond house or stock house, and then for a great many years he had been east.

Q. During the period after Western Power Corporation acquired control of the San Joaquin and

(Testimony of A. Emory Wishon.)

Midland Counties Company, and prior to the acquisition of Western Power Corporation by the North American Company, did you consider the San Joaquin Company and the Midland Counties Company as being controlled by eastern interests?

A. Yes.

Q. But that was only for a period of about seven or eight months? A. That is correct.

Q. The open account indebtedness due from the subsidiaries of Western Power Corporation, in the sum of some $19,000,000 which was cancelled in the 1930 transaction, was an amount due by those subsidiaries to their immediate parent, Western Power Corporation, was it not?

A. That is correct.

Q. During the period that the subsidiaries of the Western Power Corporation were controlled by it, and through the North American Company, did the North American Company do transfer work for those subsidiaries?

A. Well, I wasn't in very close touch with that part of the operation. I think they did, but I am not sure.

Q. Did those subsidiaries do any financing during the [992] period from 1925 to 1930?

A. Yes. There was one piece of financing, I remember.

Q. What, if anything, did you have to do with that financing?

(Testimony of A. Emory Wishon.)

A. Very little. I sat in on various discussions, but I had nothing to do with the details.

Q. Do you recall who managed the syndicate which purchased, did the underwriting in connection with that financing?

A. I remember one issue of San Joaquin for $25,000,000 which was handled jointly by Pierce, Fair & Co. and by Blyth & Co.

Q. Was that a bond?

A. That was a bond; yes.

Q. Who carried on the negotiations in respect to that piece of financing, if you know?

A. It was carried on, I think, by the North American representatives.

Q. Were the negotiations carried on here or in New York? A. I do not recall.

Q. Was that after Mr. Black had gone to New York or when he was still in the west?

A. It was after Mr. Black had gone to New York.

Q. You personally did not carry on negotiations respecting the price and the spread and such matters in connection [993] with that? A. No.

Q. Would you say they were carried on by Mr. Black?

A. Well, I notice here that the date of the issue was February 1927 and May 1927 and Mr. Black, if I remember correctly, left for New York somewhere along very early in the year 1927; so I couldn't say.

(Testimony of A. Emory Wishon.)

Miss Calkin: Will you mark these (indicating) for identification?

(The photostatic copes of the letters referred to were marked Commission's Exhibits 29 and 30 for identification.)

By Miss Calkin:

Q. Mr. Wishon, I hand you what has been marked for purposes of identification two documents, one marked Commission's Exhibit 29, the same purporting to be a letter dated April 23, 1930, from you to Mr. Edwin Gruhl, and as Commission's Exhibit No. 30 for identification, copy of a letter, what purports to be a copy of a letter from Mr. Gruhl to yourself, dated April 25, 1930, and I will ask you if you can identify those documents.

A. Yes, I do.

Miss Calkin: We offer in evidence Commission's Exhibit No. 29 and No. 30.

The Examiner: Have you seen them, Mr. Phleger?

Mr. Phleger: Yes. No objection. [994]

The Examiner: The letters as described will be received in evidence and marked Commission's Exhibits 29 and 30 respectively.

(The photostatic copies of the letters referred to were marked Commission's Exhibits 29 and 30 respectively and received in evidence.)

(Testimony of A. Emory Wishon.)

By Miss Calkin:

Q. Those letters constitute correspondence exchanged between you and Mr. Gruhl prior to the effective date of the 1930 transaction?

A. What is the date of that, please?

The Examiner: April 23, 1930.

A. Yes.

Mr. Phleger: May we identify what the effective date is? That was after the contract was made?

Miss Calkin: But not before the securities were exchanged. The deal was consummated in June, wasn't it?

Mr. Phleger: The parties were irrevocably bound to the transactions before those letters were written.

Miss Calkin: I don't think the properties were actually operated by the Applicant until some time in June.

Mr. Phleger: That is right.

By Miss Calkin:

Q. Does that constitute all of the correspondence between you and Mr. Gruhl on that subject? [995]

A. To the best of my knowledge.

Q. And I believe you testified that after the transaction became effective Mr. Downing worked out most of the personnel changes that were necessary by reason thereof? A. That is correct.

Q. When were you given the position which you now occupy with the Applicant?

(Testimony of A. Emory Wishon.)

A. I haven't the exact date in mind, but almost immediately, or within a week or so after the actual deal was closed why we moved our offices down to 245 Market Street with the Pacific Gas and Electric Company, and at that time I was appointed vice-president and assistant general manager of the Pacific Gas and Electric Company, and vice-president and assistant general manager of the Great Western properties, and at the same time elected president of the San Joaquin and Midland Counties properties.

Q. I have forgotten your testimony on direct examination, but were you an officer or director of Western Power Corporation?

A. I never was.

Q. Were you ever an employee of that company? A. No.

Q. So you had no relationship with that company to sever at the time this transaction took place? A. That is correct.

Q. From your experience as an employee of the subsidiary [996] of the North American Company is it your opinion that control by that corporation is harmful?

A. My opinion is that the North American Company could contribute nothing of a constructive nature to the Pacific Gas setup and that the control would be harmful; very harmful.

Q. Was there any change in your position with

(Testimony of A. Emory Wishon.)

the Applicant upon Mr. Black's becoming president of the Applicant?

A. No change in my position or title, except in October of 1936 I became a director of the Pacific Gas and Electric Company.

Q. Did you note any resentment among the consumers of the San Joaquin Company and the Midland Counties Company, or among its stockholders, at the time control of that company was acquired by Mr. Wilson's group? A. Yes.

Q. Was that very noticeable?

A. Quite noticeable; but inasmuch as the management, which was well known in the San Joaquin Valley over several generations, was continued why we were able to handle the situation locally. But there was resentment on the fact that any eastern group had taken control of the San Joaquin and the Midland Counties properties.

Q. As assistant general manager of the Applicant what, if anything, do you have to do with the affairs of the Vallejo Electric Light & Power Company? A. Nothing. [997]

Q. Have you never been consulted by Dr. Casper in regard to the operating problems of that company?

A. I have never met Dr. Casper to the best of my knowledge.

Q. Do you know who determines the policies of that company?

(Testimony of A. Emory Wishon.)

A. I assume the Board of Directors and the management of that company.

Q. You had no participation in the negotiations which culminated in the Applicant acquiring securities of the Western Power Corporation?

A. You mean at the time that the North American——

Q. (interposing) Yes.

A. I know nothing of the negotiations, but I have discussed it.

Q. Did you discuss the proposition with Mr. Hockenbeamer during the course of the negotiations?

A. Mr. Hockenbeamer discussed the proposition with me on several occasions; yes.

Q. And what was the substance of those discussions?

A. Largely a matter of discussion of the benefits to be derived as to organization.

Q. Did those discussions take place prior to the time the contract was signed or subsequent to that time?

A. No. They took place both before and after the con- [998] tract was signed.

Q. Who, in your opinion, was primarily the principal representative of the North American Company in connection with those negotiations?

A. Mr. James B. Black.

Q. And who represented the Applicant?

A. I think Mr. Hockenbeamer.

(Testimony of A. Emory Wishon.)

Q. You had no conversations with any representative of the Applicant, other than Mr. Hockenbeamer, prior to the time the transaction was put into contract form?

A. No, I did not on that subject.

Q. Can you summarize the benefits derived by the North American Company as a result of the acquisition of the securities of the Western Power Corporation by the Applicant?

Mr. Phleger: You mean the views which this witness has as to what they might have been?

Miss Calkin: Yes.

The Witness: May I have that question again, please?

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. Well, I should say——

Mr. Bosley (interposing): I think that question is hardly clear. In asking the question you referred to our acquisition of the stock, or securities of Western Power Corporation. It [999] is ambiguous. Do you mean——

Miss Calkin (interposing): I will put the question again briefly.

By Miss Calkin:

Q. In what respects, in your opinion, was this transaction advantageous to the North American Company?

(Testimony of A. Emory Wishon.)

Mr. Phleger: That is the 1930 transaction?

Miss Calkin: That is right.

A. Well, in the first place there was a very definite and severe competition, and duplication of properties and organization of the subsidiaries of the North American Company in Sacramento, the East Bay, the North Bay and San Francisco areas that could be eliminated under Pacific Gas acquisition; a matter of further diversity of power supply for customer demand, and for various classes of business, and an extended tie line operation with the Great Western Power Company; and the North American receiving Pacific Gas stock would benefit as a stockholder in a more efficient operation of the properties, the same as any other stockholder.

That would be my reply to the question.

By Miss Calkin:

Q. In what respects would you consider the deal advantageous to the Applicant?

A. For the same reason, plus the fact that I think that the western subsidiaries of the North American Company could [1000] be more efficiently and better operated under the Applicant than they could previously by the North American Company.

Q. Did you at that time hear any discussion in reference to assurances by the North American Company as to the extent of its participation in the future operations of the Applicant?

A. I did not.

(Testimony of A. Emory Wishon.)

Q. So any assurances that were given by the North American Company at that time were given by Mr. Black to Mr. Hockenbeamer?

A. I don't know anything about that. I wasn't a director until 1936 of the P. G. & E.

Q. Did you hear any discussions relative to the representation by North American on Applicant's Board? A. No, I did not.

Q. Has anyone representing the North American Company ever told you in substance that the representation of that company on Applicant's Board was not as important since Mr. Black had become president of the Applicant as it was during Mr. Hockenbeamer's presidency?

A. They have not.

Q. Have you considered Mr. Black a representative of the North American Company since he became president of the Applicant?

A. I certainly do not.

Q. What was the extent of your contacts with Mr. Black [1001] from the period between 1930 and the time he became president?

A. I think I saw Mr. Black practically every time he was in San Francisco. We generally went out to club functions together. I am sure I saw him practically every time he was here. As far as discussions of business was concerned, any discussion was simply perfunctory and of a general nature. Most of our contacts were social.

(Testimony of A. Emory Wishon.)

Q. How frequently were you in New York during that period?

A. I have only been in New York once since the Pacific Gas and Electric Company acquired control.

Q. And when was that?

A. I think it was in 1931. I attended the National Electric Light Association Convention at Atlantic City and spent a number of days in New York.

Q. At that time did you see Mr. Black?

A. Yes. I saw all the North American friends of mine.

Q. What was the extent of your discussion with them during that period regarding the Applicant's business?

A. Nothing more than it had been before, very general, and "How is business?" that is about the limit.

Q. During the period between 1930 and Mr. Black's becoming president of the Applicant, did you ever seek his advice on problems pertaining to your work with the Applicant? A. Never.

[1002]

Q. Did he ever give you any suggestions regarding the operations of the properties with which you were connected then? A. He did not.

Q. Do you know who selects the proxies for the annual stockholders' meetings of the Applicant?

A. No. I have heard quite a bit of testimony about that. I do not know.

(Testimony of A. Emory Wishon.)

Q. Do you know anything about who makes up the list of directors to be included in the proxy statement? A. No, I do not.

Q. Do you know how the Applicant is advised as to who North American desires to be elected as its representative at the ensuing stockholders' meeting? A. I do not.

Q. Since you have been a member of the Board has Mr. Black ever advised the Board as to what North American's recommendations are with respect to a particular matter? A. Never.

Q. Have you ever asked Mr. Black what North American's desires were in a particular matter?

A. Never.

Q. What weight do you, as a director of the Applicant, think should be given to any suggestions North American might make?

A. I think I would give considerable weight to certain [1003] suggestions, based upon my experience with North American officials and knowing their experience, and I would act according to my best judgment as to the benefit of the suggestion as applied to P. G. & E.

Q. How would you compare the relationship between the Board and the Executive Committee under Mr. Hockenbeamer's presidency and under Mr. Black's presidency?

A. I was never a director under Mr. Hockenbeamer's presidency.

(Testimony of A. Emory Wishon.)

Q. Did you attend any meetings of the Executive Committee during his presidency?

A. I did not.

Q. When did you first begin attending meetings of the Executive Committee?

A. I was elected a director in October 1936 and began attending Executive meetings from that time on.

Q. At whose suggestion did you become a director of the Applicant?

A. Well, I was advised that I had been elected director by Mr. Black.

Q. Do you consider yourself a representative of the North American Company on the Applicant's Board? A. I certainly do not.

Q. How frequently did you confer with Mr. Earl during the period he was a director? [1004]

A. From time to time Mr. Earl conferred with me, until it became a little embarrassing, in the first month or so. It was largely on the matter of how to interpret his own notes. He was not thoroughly familiar with certain parts of the operations and he used to drop in my office and ask me if I could help him. Finally, I told him it was putting me in an embarrassing position, having come right from the Executive Committee and ask me how to interpret certain things when I was not a member of the Committee. I suggested that he try to interpret them himself. He was a close friend of mine and he agreed it was probably a better thing to do.

(Testimony of A. Emory Wishon.)

That is about the only conference I ever had with Mr. Earl.

Q. That was in the early part of 1931?

A. When he was—I forget when he went on as a director. I know it was shortly after I went down to the Pacific Gas offices. Probably for a month that took place. I couldn't understand the notes much better than he could because I didn't know the background of the notes. But I finally requested that he not embarrass me because I thought I might be misunderstood.

Q. Was Mr. Earl connected with the Western Power Corporation in 1925?

A. Oh, yes; he was president of it.

Q. Was he president of the Western Power Corporation [1005] prior to the time control of that company was acquired by the Wilson interests?

A. Mr. E. T. Earl, who was a big fruit packer on the Pacific Coast, was a brother of Guy C. Earl. It was E. T. Earl that acquired the lands, the Lake Almanor lands in the beginning which was the nucleus of the start of the Great Western Power Company.

Q. How long had Mr. Earl been associated with the Western Power Company?

Mr. Bosley: You mean the Western Power Corporation?

Miss Calkin: Corporation.

A. I don't know that Mr. Earl was ever associated with the Western Power Corporation. I don't

(Testimony of A. Emory Wishon.)

know that. But he was president of the Great Western Power Company when I came here in 1927. I don't know when he was elected. I know he was an attorney by profession and had been attorney for the company prior to the time he was elected as president.

By Miss Calkin:

Q. But you don't know whether he had been connected with the Great Western Power Company of California prior to the time control of that company was acquired by the North American people?

A. No, I do not—the North American people?

Q. Yes.

A. Yes, he had. I think I am right on that. I know [1006] he was associated with the Great Western Power Corporation, possibly as an attorney, but I don't know when he became president.

Q. Was he actively engaged in any business from 1930 to the time of his death?

A. Well, his own business; he was a man of substantial means and he continued his law firm and represented the North American on the Board of Directors and Executive Committee of the Pacific Gas and Electric Company.

Q. During the time that he was president of the Great Western Power Company of California was he devoting all of his time to the affairs of that company?

A. Yes; I should say he was.

(Testimony of A. Emory Wishon.)

Q. And he resigned as president of that company in 1930? A. That is right.

Q. Was Mr. Earl considered an operating utility man?

A. No. I didn't consider him an operating utility man.

Q. During the period of Mr. Earl's presidency of the Great Western Power Company of California was Mr. Black in active charge of the operations of that company? A. Yes.

Q. You were not a member of the Applicant's Board at the time Mr. Black was elected president?

A. I was not.

Q. Do you know anything about who suggested Mr. Black [1007] for the presidency of the Applicant, other than what you have heard the witnesses testify to here?

A. Yes. Mr. Fred Elsey told me that he had been suggested by the western directors.

Q. Did he tell you that prior to the time Mr. Black was elected or after that?

A. After he was elected, I think.

Q. Did you have any communications with any representatives of the North American Company regarding Mr. Black's election as president prior to the time he was elected?

A. No, not prior to the time he was elected.

Q. In your opinion would it be possible for the North American Company to exert a substantial influence over Applicant's management and policies if it exerted such an influence over Mr. Black, even

(Testimony of A. Emory Wishon.)

though its representatives did not attend Board meetings or had any other contacts with other directors of the company?

A. I am of the opinion they could exert no influence even though they controlled Mr. Black.

Q. Why do you say that?

A. I know the Board of Directors, and just how closely they have been associated over a long period of years, just how much they stand for local control, and how independent they are in their actions.

Q. Are detail matters of the company's operations dis- [1008] cussed at the Executive Committee meeting? A. Yes.

Q. To what extent do you participate in those meetings?

A. The same as any member of the Executive Committee. We are given that privilege, although we are invited there as guests of the Executive Committee.

Q. Do you know the extent of Mr. Black's contacts with the North American representatives?

A. I do not.

Q. What members of the North American Company were you best acquainted with during the period from 1925 to 1930?

A. Well, I was best acquainted with Mr. Black, Mr. Gruhl, Mr. Fogarty, Mr. Dame; I knew Mr. Freeman, but not well, and a number of the people around the office.

Q. During that five-year period did you go to

(Testimony of A. Emory Wishon.)

New York frequently or were those men here frequently?

A. They made quite regular visits to California, went over the properties, various members, officers of the North American Company; and I was generally in New York office once or twice each year.

Q. Did you go there for the specific purpose of conferring with those people?

A. Well, I used to try to work in a convention on the side; yes, that was the specific purpose.

Q. Are you acquainted with Mr. Harrison Williams? [1009]

A. I have met Mr. Williams.

Q. Did you meet him during the period from 1925 to 1930?

A. I met him the first time I was ever in the North American office.

Q. Did he discuss with you the affairs of the companies with which you were then connected?

A. No. I thought he was an accountant. He was up in the room there and I had a very intimate conversation with him. I then asked Mr. Gruhl who this nice fellow, Williams, was. I had never heard of him before and I felt rather embarrassed afterwards.

Q. Mr. Wishon, do you send any reports to the North American Company? A. I do not.

Q. Does the department with which you are connected send any such reports?

A. Not to my knowledge.

(Testimony of A. Emory Wishon.)

Q. Are you familiar with Applicant's Exhibits 33 and 45?

A. I don't think I could identify them offhand.

Q. I wish you would examine those exhibits and tell me whether or not, to your knowledge, they include copies of all reports regularly sent by the Applicant to the North American Company?

A. (Examining exhibits). I have no knowledge of any [1010] report being sent to the North American Company, except from the testimony I have heard here. Prior to this hearing I knew of no report being sent to the North American Company.

Q. Since you have been associated with the Applicant what correspondence have you had with representatives of the North American Company?

A. I think it confines itself pretty well to Christmas cards. I think I have had correspondence with Mr. Fred Doolittle on several occasions, possibly since his retirement and possibly before that. He has a son who is a professor, or instructor, down at California-Tech and Mr. Doolittle has written me a number of times in connection with his son. That is about the extent of my correspondence.

Q. Do you know whether or not Mr. Doolittle is now associated with the North American Company?

A. I do not.

Q. Have you ever sought North American's advice in connection with the preparation of Applicant's budget? A. No.

(Testimony of A. Emory Wishon.)

Q. In your capacity as assistant general manager you are very familiar with the various construction projects which have been undertaken by the Applicant since 1930, are you not?

A. Quite familiar; yes.

Q. Do you know whether or not the North American Company has been consulted in reference to any major construction pro- [1011] jects of the Applicant since 1930?

A. Not to my knowledge.

Q. Do you know whether or not North American has approved any construction projects prior to the time they have been acted on by the Board?

A. Not to my knowledge; no.

Q. Have you ever heard anyone express North American's views with regard to the Hetch Hetchy situation? A. Never.

Q. Do you know whether or not North American has advised the Applicant with respect to its activities in municipal elections on bond issues to construct a distribution plant in the City of San Francisco? A. I do not.

Q. Do you know anything about the protest by the North American Company in 1933 when the dividends on Applicant's common stock were reduced?

A. Mr. Hockenbeamer—I wasn't a director at the time—but Mr. Hockenbeamer told me on one occasion that there had been a protest.

(Testimony of A. Emory Wishon.)

Q. Did he make any further comment?

A. Not that I remember; no.

Q. You don't know what action Mr. Hockenbeamer took, if any, after he received the protest from the North American Company? [1012]

A. I do not.

Q. Do you know whether or not Mr. Black confers with representatives of the North American Company regarding proposed dividends on the common stock before the same are declared by the Board? A. I do not.

Q. Do you know whether or not the increase in the dividends on Applicant's common stock, which occurred in 1936, was done at the suggestion of the North American Company?

A. No, I do not.

Q. You were a member of the Board at that time, were you not?

A. I became a member of the Board in October 1936. I don't specifically remember the increase of dividends.

Q. You don't specifically remember what discussion occurred at the Board prior to the time that increase took effect? A. I do not.

Q. As assistant general manager of the Applicant what part, if any, have you played in the various financings of the Applicant which have occurred since 1930?

A. A very small part. I have listened in on some of the discussions.

(Testimony of A. Emory Wishon.)

Q. Have you had any part in the selection of the syndicate manager of any of the issues? [1013]

A. I have not.

Q. Do you know who selected the syndicate manager during Mr. Hockenbeamer's presidency?

A. I assume Mr. Hockenbeamer did, by approval of the Board of Directors and Executive Committee; but that is only an assumption.

Q. Are you acquainted with Stanley Russell?

A. I met Mr. Russell on one occasion.

Q. Was that during Mr. Hockenbeamer's lifetime?

A. I can't remember the year.

Q. What do you know, if anything, about the selection of Blyth & Co. to head the syndicate which purchased the $90,000,000 issue the Applicant put out in March or April of 1936?

A. Well, I know that that selection was made based upon the unanimous approval, according to the testimony, and incidentally my own judgment prior to the testimony, of the Board of Directors and the Executive Committee.

Q. Did Mr. Black ever discuss with you the selection of Blyth & Co. as syndicate manager of that issue? A. No.

Q. Did any representative of Blyth & Co. ever approach you in an effort to get that business for that firm? A. No.

Q. Are you acquainted with Blyth & Co? [1014]

A. Yes. I am acquainted with Mr. Blyth.

(Testimony of A. Emory Wishon.)

Q. Do you know any of the other members of that firm?

A. Yes. I know one or two of the salesmen. One worked for me many years ago, Mr. Shurtleff.

The Reporter: Spell it, please.

The Witness: I can't spell it.

Miss Calkin: S-h-u-r-t-l-e-f-f.

By Miss Calkin:

Q. Would you say that you were better acquainted with the representatives of Blyth & Co. than you are with the representatives of Lazard Freres & Co.?

A. Very much. I know no one with Lazard Freres & Co., except having met Mr. Russell.

Q. And your friendship with Mr. Blyth is closer than that with Mr. Russell?

A. Very much so.

Q. Do you know whether or not Mr. Black conferred with any representatives of the North American Company prior to the selection of Blyth & Co. to head the 1936 syndicate? A. I do not.

Q. Do you know anything about the participation of Dillon Read & Co. in the April 1936 syndicate? A. I do not.

Q. During the time you were associated with the companies which were subsidiaries of the North American Company, [1015] did Dillon Read head any business of those subsidiaries?

A. No; I am sure they did not.

(Testimony of A. Emory Wishon.)

Q. As a director of the Pacific Gas and Electric Company are you more favorable to the leadership of Applicant's business by Blyth & Co. than you would be toward the leadership of Lazard Freres & Co.? A. Very much so.

Q. Why?

A. In the first place, I think Blyth & Co. is an outstanding house, I know Charlie Blyth personally and his organization; it is a western house and I think a western house is in a better position to represent us in the distribution of securities, and has a greater knowledge of our securities and our properties, than any other foreign outfit could have.

Q. What part do you think that the North American Company should take in the formulation of the financial policies of the Applicant?

A. None; except their representatives on the Board of Directors should take part in it.

Q. To your knowledge has the North American Company played no part in the formulation of the financial policies of the Applicant?

A. As far as I know, no part.

Miss Calkin: I think that is all.

The Examiner: Any redirect? [1016]

Redirect Examination

By Mr. Phleger:

Q. Mr. Wishon, were you ever an officer or employee of the North American Company?

A. Never.

(Testimony of A. Emory Wishon.)

Q. Did you ever receive any compensation from them?

A. No, not from the North American Company; not to my knowledge.

Q. I show you Commission's Exhibits 29 and 30. You will recall testifying to a conversation with Mr. Gruhl regarding his making an effort to see that certain employees of the Great Western and San Joaquin were retained by the Pacific Gas and Electric Company after the 1930 transaction. Was your conversation with Mr. Gruhl along the same lines as that correspondence?

A. Very much, and probably a little more so.

Q. And, as I recall your testimony, it was to the effect that Mr. Gruhl disavowed any ability to, as I might term it, to protect those employees and said that he would not make any representation?

A. That is correct.

Q. You became a vice-president of the Pacific Gas and Electric Company in 1930, I believe you testified. When did you become what is known as a corporate vice-president?

A. I think it was in January of 1939. [1017]

Q. You might explain what the difference is between being a vice-president and a corporate vice-president.

A. No difference in salary. One is that "vice-president" is simply a title, given for convenience, I guess, and prestige, and an appointment; the

(Testimony of A. Emory Wishon.)

other is elected as a corporate officer of the company by the Board of Directors.

Mr. Phleger: That is all.

Miss Calkin: No further questions.

The Examiner: You may be excused, Mr. Wishon. Thank you.

(Witness excused)

The Examiner: We will take a recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

Mr. Phleger: Mr. Black, will you take the stand, please?

Whereupon—

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Black, will you state your name and residence for the record?

A. James B. Black. My residence is in San Francisco.

(Testimony of James B. Black.)

Q. Where and when were you born? [1018]

A. I was born in May of 1890 in Sycamore, Illinois.

Q. When did you come to California?

A. In 1902 my family came to California and settled in Oakland.

Q. Have you lived in California ever since, with the exception of the period from 1927 to 1935 that you were in New York? A. Inclusive, yes.

Q. You stated that your family located here in 1902. Where did they locate?

A. Oakland, California.

Q. Did they continue to live there?

A. Yes. My mother still lives there.

Q. Your father is not living?

A. My father is deceased.

Q. But from the time you came to California your family continued to live here?

A. That's correct.

State your education.

A. I went to the grammar schools in the middle west and Oakland and took my high school work at the California School of Mechanical Arts in San Francisco. From there I went to the University of California and graduated in mechanical engineering with the degree of Bachelor of Science.

That was in May, 1912? [1019]

A. In May of 1912, yes.

Q. Prior to your graduation had you had any experience in business or employment?

(Testimony of James B. Black.)

A. Well, I had the usual neighborhood jobs. In addition to that, I worked in summers all through my time at university and most of my time in high school in the lumber camps and in construction jobs up and down the Coast. I worked one summer as a constructional iron worker and another as a driver of a mule freight team in the Sierras, and various jobs as a laborer.

Q. What was your first employment after leaving the university?

A. Two weeks after I graduated I made application for employment with the City Electric Company, which was a subsidiary of the Great Western Power Company and owned all of the Great Western Power Company properties in San Francisco, and I was employed a few days afterward as a service inspector.

Q. Did your employment come about through your own efforts or through the efforts of others?

A. Entirely my own efforts, as far as I know. I went in and asked for the job and, after talking with three or four people, I was put on. I didn't know any of the people that I talked to before I met them at that time.

Q. What were your duties commencing with your employment and thereafter?

A. Well, as service inspector I worked with the cus- [1020] tomers and with the service that was given the customers. I called on them and tried to work out any difficulties that might develop. I later

(Testimony of James B. Black.)

got into sales engineering work; first, straight sales work and, later, into sales engineering work. I held various administrative jobs in the San Francisco Division. The properties of the City Electric Company later were taken over by the Great Western Power Company of California, which I think was in 1915 or 1916, which was the successor company to Great Western Power Company; and I served as a division manager and later was taken to the general offices of the company; served as Assistant General Agent and General Sales Manager, and was Acting General Manager, General Manager, and I was made Vice-President and General Manager in 1922.

Q. Did you also become a director at that time?

A. Yes.

Q. State generally what you know of the acquisition by Western Power Company of the controlling interest in the San Joaquin Light and Power Corporation and Midland Counties Public Service Corporation.

Mr. Bosley: You mean Western Power Corporation.

Mr. Phleger: Yes, Western Power Corporation. I think I said that.

Mr. Bosley: "Company", you said.

A. The acquisition of control of those properties took [1021] place as a result of negotiations undertaken late in 1924 and completed early in 1925. They were carried on initially in California, and I

(Testimony of James B. Black.)

assisted Mr. W. H. Wilson, who was then President of Western Power Corporation in his discussions with Mr. Balch and Mr. Meyer of Los Angeles, who represented some of the larger stockholding groups; and also worked with Mr. A. E. Wishon and Mr. A. G. Wishon in the development of the facts which were necessary in connection with the negotiations.

By Mr. Phleger:

Q. Following the acquisition of control by Western Power Corporation of the San Joaquin and Midland Counties securities did you become an officer of those latter companies?

A. I became a director immediately, but I think I was not elected an officer until after I had gone to New York in 1927.

Q. What took place physically following the acquisition of the control?

A. Well, almost immediately we undertook to construct the steel tower double-circuit transmission line from the Brighton sub-station, near Sacramento, located on the Great Western Power of California system to the Wilson sub-station, near Merced, of the San Joaquin system. That was completed, I think, in 1926 and the benefits from joint physical operation of the properties—a good many of them—were obtained through the operation of that transmission line. [1022]

Mr. Wishon and I, of course, collaborated closely endeavoring to work out any economies with respect

(Testimony of James B. Black.)

to the operation of the two systems. He at that time was Vice-President and General Manager of the San Joaquin Company and the Midland Company. We exchanged ideas and endeavored to develop the best points for the entire property group that either one of us had developed on our own systems.

The Examiner: Is that transmission line of which you speak the one that Mr. Wishon referred to as a "tie-line"?

The Witness: Yes.

By Mr. Phleger:

Q. It is a fact, is it not, that after that company was acquired in 1925 there was a very close cooperation between both companies physically and in a managerial way?

A. Yes, yes. We tried to operate them as nearly as possible as one company but maintaining the dual technical management.

Q. State briefly what you know of the acquisition later in 1925 of the control of Western Power Corporation by the North American Company.

A. Those negotiations were carried on entirely in New York and, with the exception of supplying information to Mr. Wilson, who carried them on on behalf of the Western Power Corporation, I had little to do with it until the later stages, [1023] and I was called to New York and sat in with some of the people who were carrying on the negotiations.

(Testimony of James B. Black.)

At that time they had pretty well taken shape. I can't say that I contributed a great deal to it.

Q. That acquisition of control by North American of Western Power Corporation took place in the latter part of 1925. Did you become a director and officer of the Western Power Corporation at a later date?

A. Yes. I was made Vice-President and director of Western Power Corporation, I think, in November of '27. It was late in '27 in any event.

Q. Is that '27 or '26?

A. '26. That's correct.

Q. When did you go east with the North American Company?

A. I went east, I think it was, the first week in February of 1927 and transferred by residence from San Francisco to New York.

Q. You became an officer of the North American Company, did you?

A. Later, yes. Later in that year I was made a Vice-President of the North American Company. At the time I went to New York I was the Vice-President and director of Western Power Corporation.

Q. You went east at the invitation of the North American Company, did you? [1024]

A. Yes, I did.

Q. It is a fact, is it not, that from your entry into business in 1912 until you went east in February, 1927 that your entire time had been spent

(Testimony of James B. Black.)

with the Great Western Power Company and, latterly, indirectly with the Great Western Power Company in California? A. That is correct.

Q. And you had no business or other connections with any utilities outside of the State during that period? A. That's correct.

Q. You have testified that later in 1927 you became a Vice-President of the North American Company. How long did you continue in that position?

A. Until late in November of 1935.

Q. At which time you resigned?

A. At which time I resigned.

Q. And ceased at that time to be an officer or employee of the company?

A. That's right. I resigned also at that time from the directorship and Vice-President of Western Power Corporation and, I think, also of the North American Utilities Securities Company.

Q. Mr. Black, were you ever a director of the North American Company? A. No. [1025]

Q. Were you ever a member of its Executive Committee? A. No.

Q. Where did you live when you were in the east?

A. I lived for a few months at Mount Calvary, New Jersey and commuted to New York; and later I bought a home in Westchester County and lived there during the balance of the period that I was in New York.

(Testimony of James B. Black.)

Q. What were your duties as a Vice-President of the North American Company?

A. Initially they were to be the point of contact with the California subsidiaries of North American or Western Power subsidiaries and to set up such machinery as might be necessary to bring about that contact between the North American Company organization and the Western Power group in order that they might keep informed as to what was going on. I had some special assignments having to do with the other subsidiaries of North American Company, but nothing that might be called of a regular, continuing nature.

Q. You were in California with the Great Western Power Company of California and associated with the San Joaquin Company during the period in 1925 until you went east in 1927, during which time those companies were subsidiaries of the North American Company. Did you hear Mr. Wishon's testimony yesterday as to the extent and nature of the control and supervision exercised by the North American Company over those [1026] companies?

A. Yes.

Q. Were his statements correct as to the extent and nature of that control?

A. I think they were.

Q. During the period after you went east from 1927 until the Pacific Gas and Electric Company acquired the North American securities held by it or by its subsidiaries in the Great Western and San

(Testimony of James B. Black.)

Joaquin Companies, was that control and supervision exercised and of a similar nature.

A. Yes. A good deal of it was through me.

Q. And you were the agency who was particularly active in behalf of North American Company in that supervision and management?

A. That is correct. I was not the sole agency, but they looked to me to do most of the work.

Q. State, if you will, what you know of the negotiations leading up to the acquisition by Pacific Gas and Electric Company in 1930 of the securities of the Great Western Power Corporation of California and the San Joaquin Light & Power Company?

A. Well, the first I heard of the desire on the part of the Pacific Gas and Electric Company to acquire the holdings of Western Power Corporation in the California subsidiaries was when Mr. Frank L. Dame, who was then President of the [1027] North American Company, called me into his office and said that he had word indirectly from Mr. Hockenbeamer that he would like to discuss with someone the possibilities of Pacific Gas and Electric Company acquiring the California properties of the North American group. He never told me just how that information came to him, but I believe it came through Mr. Fred Elsey to someone in New York, probably some banking interest, and then to Mr. Dame. Mr. Dame told me at that time that he was very loathe to sell control of the properties in California. He felt they had a great future,

(Testimony of James B. Black.)

or a good future, and he was particularly sensitive to any criticism that perhaps the North American Company had merely bought them originally in the first place for trading purposes and they were in a sense departing from their policy of many years of not buying properties for the purpose of immediately selling them but for the purpose of integrating them into large systems and building them up into large economic units. He said, however,—and this came out of the discussion—that there were certain factors out here, particularly that relating to the competition between the Great Western Power Company of California and Pacific Gas, which might justify a sale of the properties in spite of the North American Company policy, which I have described, and that he thought it was worthwhile investigating. And he asked me to go out and call on Mr. Hockenbeamer and develop the situation. [1028]

That I did almost immediately. It was, as I recall, late in or some time in September.

Q. Of 1929?

A. Of 1929. I think I advised Mr. Hockenbeamer that I was coming. I don't recall that specifically. But, in any event, there were no particular preliminaries in our getting down to business when I arrived.

Q. State now the substance of your negotiations with Mr. Hockenbeamer.

(Testimony of James B. Black.)

A. Well, before I left New York and on the way out I had assembled pretty well the facts with respect to earnings and the balance-sheet position of our companies out here. Of course, I had a pretty good knowledge of them already. I developed some ideas of my own as to what could be done by putting the properties together. And when Mr. Hockenbeamer and I met, we sat down together and I found that he had also developed ideas along that line, and we spent a good many hours in discussing them and found that we were in accord in some respects and quite wide apart in others. Those negotiations developed. We made a good deal of progress in the several weeks that we worked towards the development of the reconciliation of our ideas as to what could be done with the properties and where the benefits would accrue and what they would amount to, and also as to the form in which the compensation to Western Power should take if a satisfactory deal [1029] could be made.

Because of the financial disturbances at that time, which developed late in September and early October, it was deemed advisable to break off the negotiations. I returned to New York. Later, around in November, it appeared that the markets had quieted down and that we were in for a little breathing spell for a while, and I again returned to San Francisco and we developed our ideas further. And again the general situation became more difficult, and Mr.

(Testimony of James B. Black.)

Hockenbeamer and I also developed some divergences of opinion, which didn't appear in the early negotiations, and I again returned to New York.

Later—I think it was some time in January—Mr. Wishon called me on the telephone and said that he had walked back to his office, or down the street in any event, with Mr. Hockenbeamer and that they were window shopping and gossiping about their various businesses, their two businesses; and that Mr. Hockenbeamer rather casually remarked that it might be a good time to discuss these matters again, that there might be some hope that we might get together. And I knew enough of Mr. Hockenbeamer to know that he wanted to talk to me very soon after that when Mr. Wishon relayed the information to me. So I got in touch with Mr. Hockenbeamer and suggested that he come to New York this time, which he did. And in New York we went over very much the same ground that we had gone over in the previous two rounds, and came to an understanding. I [1030] don't believe that understanding was reduced to writing to any great extent; perhaps a single, typewritten page of the most essential parts of the understanding.

Mr. Hockenbeamer returned to San Francisco and I followed him shortly thereafter, and we worked out the definitive agreement between the North American Company, which undertook to cause Western Power Corporation to transfer its

(Testimony of James B. Black.)

holdings to Pacific Gas and Electric Company. And that agreement was signed by me and by Mr. Hockenbeamer, I think on March 29 of 1930.

Do you wish me to go ahead?

Q. Yes, go ahead.

A. I remained in San Francisco and gave what assistance I could in the preparation of the application to the Railroad Commission for approval of the transaction, and when that matter had been submitted I returned to New York. Subsequently the Railroad Commission approved of the transaction, and the actual transfer of the securities, the closing of the deal was made in New Jersey, Jersey City, in the early part of June. And I left that day to come to San Francisco or the following day—I'm not sure which—to attend a convention of the National Electric Light Association, which was being held there in the month of June—or here in the month of June. I was here a week or two and then returned to New York.

Q. Mr. Black, the contract to which you have reference, [1031] dated March 29, 1930, is the contract a copy of which has been introduced in evidence as Applicant's Exhibit 6, is it not?

A. Yes, that's correct.

Q. During the course of those negotiations at such times as you were in San Francisco did you keep officers of the North American Company fully advised of the progress of the discussions?

A. I did, yes.

(Testimony of James B. Black.)

Q. And with whom did you communicate particularly?

A. With Mr. Frank Dame, who was President of North American Company, and Mr. Edwin Gruhl, who was then Vice-President and General Manager of the North American Company.

Q. Previous witnesses have testified to the competitive situation which existed between the Great Western Power Company and the Pacific Gas and Electric Company in various areas, and I believe the document filed by the Railroad Commission of the State of California shows that approximately 90 percent of the revenues of the Great Western Power Company of California came from areas in which it was in competition with Pacific Gas and Electric Company. Would you say those figures are about right?

A. That is approximately correct, yes.

Q. And during the many years that you were with the Great Western Power Company you were familiar, of course, with that competitive situation? [1032] A. Quite.

Q. It was a common practice, was it not, to compete with the Pacific Gas and Electric Company for every bit of available business in that territory, was it not?

A. That's correct. And it developed at various times into competition for each other's business that they had on the lines.

(Testimony of James B. Black.)

Q. And not only competing for new business but they competed for the existing business of the other company? A. At times, yes.

Q. And I suppose during those many years you came in rather close contact with many of the Pacific Gas and Electric Company officials?

A. Quite, yes.

Q. Did the bringing into San Francisco of natural gas along the latter part of 1929 have any effect upon the negotiations?

A. It had a great deal of effect on the willingness of the North American Company people to dispose of the control of those properties.

Q. Will you explain your answer?

A. The general practice in sale of natural gas to large industries is to—in fact, it is necessary to —make rates which are based on the ability of the supplying company to cut off the service in case of necessity. In other words, it [1033] is a surplus gas. Now, those rates are not as rigidly fixed as the regular rates for the firm sale of gas. And the Great Western Power Company had a great deal of industrial business on its lines, a relatively large amount of industrial business, and its growth for many years had been along that line. And knowing the competitive situation as I knew it, I was quite apprehensive of the effect that the introduction of natural gas and its use in the competitive field might have upon the Great Western Power Company's fortunes in the future.

(Testimony of James B. Black.)

Q. It was your view and that of other North American officers, I take it, that the introduction of natural gas by the Pacific Gas and Electric Company had thrown the balance, as it were, in its favor?

A. It gave them a competitive weapon which they didn't have prior thereto.

Q. And the effect of which you were somewhat apprehensive? A. Yes.

Q. During the course of these negotiations and discussions which you have just described did you come in contact with anyone in the Pacific Gas and Electric organization or its officers or directors other than Mr. Hockenbeamer?

A. Mr. Beckett, Assistant Treasurer, prepared a great deal of information for Mr. Hockenbeamer and he was in and out of the discussions, but he took no part in them except [1034] with respect to explaining or discussing certain details which he had worked up or certain reports which had been prepared under his direction. I recall only one other instance, and that was in an afternoon when Mr. Hockenbeamer and I developed some rather wide differences of opinion, and he called Mr. Frank Elsey, who was a director and member of the Executive Committee and in whom Mr. Hockenbeamer had a great deal of confidence, and Mr. Elsey came down to Mr. Hockenbeamer's office and took part in the discussions for perhaps an hour or two. With that single exception I don't recall anyone else,

(Testimony of James B. Black.)

either officer or director, taking part in the discussions.

Q. That was Mr. Fred T. Elsey?

A. Yes.

Q. In these discussions was anything agreed upon with respect to the personnel of the companies whose securities were to be acquired by the Pacific Gas and Electric Company?

A. There was no agreement whatsoever. There was, of course, always the expressed desire on my part that they be treated with the greatest of consideration and that any prejudices or feeling which might have developed out of a rather intense competitive activity be put aside and that the best people in both organizations be saved for the combined organization. It was recognized at all times that there would have to be some reduction in forces.

Q. But it is a fact, is it not, that the manner, method [1035] and handling of the transfer of control and subsequently of the properties were to be entirely in the hands of the Pacific Gas and Electric Company? A. That is correct.

Q. Now, with respect to the position of North American Company as a stockholder in the Pacific Gas and Electric Company after the transaction, will you state what discussions there may have been on that subject?

A. Well, at the time of the—I don't know just where, but some place along in the negotiations—I think it was in the latter part of them—Mr. Hock-

(Testimony of James B. Black.)

enbeamer and I had some discussions as to the desirability of North American Company having some representation on the Board of Directors of Pacific Gas and Electric Company. And I took the position that, if this deal went through, it would probably be the largest single investment that the North American Company had; but I was the only one who had any great familiarity with the Pacific Gas and Electric Company system, and I had the greatest knowledge of the San Joaquin and Midland Companies of anyone in the North American Company organization, as such; and that I felt that they should have a representation on the Board of Directors in order that they might be assured of having such reports and other data which might be regularly furnished directors, and that they might have an opportunity if they saw fit to come in and express an opinion on any general policies which [1036] they felt might affect or jeopardize the value of their investment.

Mr. Hockenbeamer concurred in that. He agreed that it was entirely proper, and later in the discussions he and I agreed, had an understanding as to the extent of that representation. It developed that in our conversations certain reports were furnished regularly to members of the Executive Committee that were not furnished regularly to the members of the Board, and also that the Executive Committee discussed a great many matters which might

(Testimony of James B. Black.)

not come to the attention of he Board. And for that reason Mr. Hockenbeamer and I agreed that it would also be proper if the North American Company had a representative on the Executive Committee. That understanding was purely a verbal one and had nothing to do with the negotiations or the deal, as such.

Q. Mr. Black, was there any discussion as to whether or not after the transaction the North American Company would consider its position as being that of an investor merely, or whether it had any purpose or intention of attempting to become active with the idea of increasing its holdings and perhaps eventually obtaining control or becoming a dominating influence?

A. That was the understanding from the inception of the discussions. In fact, it was the question that Mr. Dame determined in his own mind before he allowed them to get to [1037] the point where they became very serious. He realized and we all realized that, if the transaction took place, the North American Company would be giving up control of its properties and would be taking a position as an investor in the Pacific Gas and Electric Company.

Mr. Hockenbeamer and I discussed that many times, and Mr. Hockenbeamer told me repeatedly that he would not consent to any transaction which would at that time or at any time in the future in his judgment jeopardize the control of Pacific Gas and Electric Company by the local directors who,

(Testimony of James B. Black.)

and with their predecessors, had developed it over the past 75 or 80 years. He said that even if he was foolish enough to consent to a transaction which would change the control that he wouldn't get one vote on his Board of Directors for it. And he told me that he had satisfied himself that control had not been jeopardized and, in his opinion, it would not be. And under those circumstances he was willing to go ahead with the deal.

Q. Is it fair to say, therefore, that on the part of the North American Company it was recognized and had been decided by it that, if it went forward with the transaction, it would yield for all future times the possibility of control and that it would assume and be in the position of an investor merely?

A. That was recognized as the fact.

Q. Yes. And the recognition of that fact by North [1038] American Company was communicated to Mr. Hockenbeamer? A. Oh, yes.

Q. And constituted a premise of your future discussions?

A. Yes. Mr. Hockenbeamer and I discussed it many times, and I think he understood quite fully my position in the matter and my recommendations to the North American Company officers, which were unnecessary.

Q. Was this discussion as to representation, and so forth, deemed to be for any duration?

A. No. There was never any time limit put on it. It was just a general understanding between Mr.

(Testimony of James B. Black.)

Hockenbeamer and myself that that would be done. There was nothing ever said about how long it should last or any considerations as to changes if conditions changed in the future.

Q. Was there any agreement between Mr. Hockenbeamer and yourself that there would be three directors? A. That is correct.

Q. And a member of the Executive Committee. Do you know how that number happened to be agreed upon?

A. Well, it was agreed upon that probably the North American Company, with the number of votes that it would have, with nearly a 20 percent interest as of that time—about 19 percent, I think—could probably elect three directors by cumulative voting, if they chose to do so; and Mr. Hockenbeamer felt that it was entirely proper and I felt that it was entirely [1039] proper to accomplish perhaps the purpose which both of us had in mind. A lesser number would have been just as effective, but there was no certainty that I would live forever or would be with the North American Company forever, and it was felt desirable that other officers of the North American Company should be burdened with some of the responsibility for knowing something about the Pacific Gas and Electric Company and be in a position that, if they saw fit, they could intelligibly express themselves on its policies in the future.

(Testimony of James B. Black.)

Q. And who did the North American Company name as its representatives?

A. The North American Company named Mr. Edwin Gruhl, who was then Vice-President and General Manager; Mr. Guy C. Earl, who prior to the taking over of the properties of the Western Power Corporation of California was President of the Great Western Power Company of California; and myself.

Q. And Mr. Earl became the representative on the Executive Committee?

A. He did eventually. I was elected first, and the reason for that was that—or appointed first, and the reason for that was that we were discussing at that time with Mr. Earl just what his relationship should be to the North American Company, and until that matter was settled I went on the Executive committee. But I attended no meetings, perhaps one meeting, and I think I served only for two or three weeks [1040] or until the next meeting of the Board of Directors when Mr. Earl replaced me. He served until his death in June of 1935.

Q. Did he remain in the employ of the North American Company?

A. He became an employee of the North American Company. He was President of the Great Western Power Company of California and, as such, received his remuneration from that company. But when he was made a member of the Executive

(Testimony of James B. Black.)

Committee of Pacific Gas and Electric Company he was put on a retainer or salary—I don't know what the technical name would be—of $12,000 a year by the North American Company

Q. Something has been said earlier in these proceedings as to why the Pacific Gas and Electric Company would want to acquire the San Joaquin and Midland securities and not simply those of the Great Western. What do you know about that?

A. Well, by the acquisition of the San Joaquin and Midland companies they rounded out a fully integrated system here which is serving a single economic area. That is, the two great valleys: The San Joaquin and the Sacramento, and the San Francisco Bay area and the Coast areas contiguous thereto. And the southern limit of that area would be the Tehachapi Range, which is a geographical and, I think, pretty generally the trade boundary between the southern part of the State and the northern part of the State. It would, in effect, enable this very large system with its resulting economies to [1041] serve the entire economic area from the Nevada and Oregon lines to that boundary between northern and southern California.

Q. During your discussions with Mr. Hockenbeamer, as you have related, you discussed the nature and extent of reports that might be furnished the North American representatives on the Pacific Gas and Electric Board. That is true, is it not? A. That's correct, yes.

(Testimony of James B. Black.)

Q. I show you Exhibits 45 and 33, Applicant's Exhibits 45 and 33. Do those reports and documents generally constitute the reports and documents that you discussed with Mr. Hockenbeamer during the course of negotiations as being those that you thought that should be sent to the North American representatives?

A. Yes. There are probably some additions or subtractions as the form of the reports or method of reporting changed. But that is substantially correct.

Q. During the period between June 30, 1930 and November, 1935, when you became President of the Pacific Gas and Electric Company, what contacts did you have with the Pacific Gas and Electric Company and its officers?

A. Well, I came to California about once a year. I had no regular time of visiting, but I tried to make it about once a year. During the time that I was in California I spent most of my time in San Francisco. I spent always a few days in Los [1042] Angeles. I would call on Mr. Hockenbeamer and discuss generally the affairs of the company with him. I would talk briefly with Mr. Earl. I called on my business friends here in San Francisco, among them the directors of the Pacific Gas and Electric Company. I used to drop in and see Mr. Downing, Mr. Coghlan, Mr. Vincent, Mr. Marquard and others and officers of the Pacific Gas and Electric Company whom I had known for many years. They

(Testimony of James B. Black.)

were only social calls. We never discussed the business of the company, and usually I dropped in to see Mr. Hockenbeamer the last day or so I was here and, if I heard anything around town that I thought he ought to know about that perhaps he did not know about, I used to discuss it with him. That, I think, covers the visit. I spent, as I say, most of my time in calling on my acquaintances and friends here.

Q. About how long did you spend out here on these trips?

A. Oh, in San Francisco I should say I averaged a week.

Q. What contacts did you have with these same men in New York?

A. When they came to New York they would usually call me up. Occasionally we would have lunch together and occasionally they would drop in and call on me in New York at my office.

Q. Were these calls generally of a business or of a [1043] social nature?

A. Well, they were a mixture of both. The calls in New York were almost entirely social. When Mr. Hockenbeamer came to New York I used to discuss with him generally the affairs of the company and the affairs of the industry and the condition of the state, business and politically. And they took pretty much the same pattern as they did when I came to San Francisco.

Q. During that period did you or anybody else

(Testimony of James B. Black.)

to your knowledge representing North American Company make any requests or recommendations to the Pacific Gas and Electric Company or its officers as to how it should conduct its business?

A. No. The only—well, that is rather hard to answer. I did make some suggestions early in, I think it was, June or July perhaps of 1930 with respect to the personnel of the organizations. In fact, I talked rather earnestly with Mr. Hockenbeamer several times on that. But after I left San Francisco in June of '30 I don't think I ever had any discussions with him on that point except to make an inquiry perhaps once in a while as to why an individual might be getting along or why a change would be made. That was largely out of the desire to satisfy myself as to how things were going. I never discussed any such matters prior to the time any decision was made by him. I did discuss with him—he initiated the discussions—early in 1935 the make-up of the [1044] syndicate which—perhaps that is too strong a statement—I would say, discussed with him the relative strength and desirability of including certain underwriting groups in the syndicate which he was forming in 1936 for the initial underwriting which took place in that year, and he called me several times during that year and I gave him my opinion as to prices that he ought to get for bonds that he was selling, and he also wanted my opinion a couple of times on the likely course of the bond market.

(Testimony of James B. Black.)

Q. That was in 1935?

A. That was in 1935.

Q. Yes.

A. I never discussed with him the other incident, which came out of the reduction in the dividend rate in 1933, but I did discuss with Mr. Earl and communicated with Mr. McKee in connection with that incident.

Q. What was the attitude of the North American Company with respect to the cut in the dividend in 1933?

A. Well, at that time Mr. Dame and I were on the Board of Pacific Gas and Electric Company, and also Mr. Earl; and it was Mr. Dame's feeling and mine that, first, on an important matter of that kind that all members of the Board should have a chance to express their opinion. It was the opinion of Mr. Dame and myself that the reduction at that time was premature, that we should go along—the Pacific Gas and [1045] Electric Company should go along at least that quarter and perhaps another quarter before taking any such step. There were great hopes at that time that business might take a turn up, and we felt that a stock of the type of Pacific Gas and Electric Company, which was of an investment nature, could well afford in view of the cash position of the company and its surplus to continue to pay dividends out of surplus if there was a reasonable expectation that within a reasonable period they might again

(Testimony of James B. Black.)

be earned. There was never any doubt in our mind that that time would come. It was just a question of when. And I called Mr. Earl—that action—do you wish me to tell about my recollection of that action? Q. Yes.

A. I knew nothing of the action of the Board in reducing that dividend, nor did Mr. Dame, until I was either informed by Mr. Earl on the telephone that night or I read it in the papers the next morning, I don't remember which. And I called Mr. Earl and asked him what his opinion was of the situation, and he said that if he had had the sole decision he would have continued the dividend at least for a while. But he brought up the question of public policy which, of course, we were too far away, both Mr. Dame and myself, to have a very good understanding of. But he said that he felt, in view of the dividend reduction having been declared by nine members of the Board only, it ought to be reconsidered. [1046] I told him that I felt the same way and I knew that Mr. Dame felt the same way, and about that time Mr. Miller came into the office—Mr. C. O. G. Miller. He called on us and he had learned of the reduction from reading it in the newspapers, and his views were almost exactly the same as the views of Mr. Dame and myself. And as I recall, Mr. Miller joined in a telegram to Mr. McKee urging that he use his influence to have the matter reconsidered, and Mr. Dame called Mr. Hockenbeamer on the telephone

(Testimony of James B. Black.)

and gave him his views and mine and urged Mr. Hockenbeamer to have the matter reconsidered, if possible. It was never reconsidered. As far as I know, the reconsideration was never discussed at the Board meeting.

Q. What instructions generally did Mr. Earl have from the North American Company?

A. Well, he was expected to collect all of the reports and the minutes of previous meetings which were furnished to directors and to the Executive Committee and to forward them to the President of the North American Company immediately after meetings. He was asked also to mention any important matters that came up for discussion in the Board or decisions that were made, matters of policy which he thought that the North American Company, as large stockholders, and Mr. Dame and myself, whoever were the North American officers members of the Board, would be interested in. That he did.

Q. With the exception of the dividend matter that you [1047] have just referred to, do you recall ever having communicated the views of yourself or Mr. Dame of the North American Company with Mr. Earl with respect to his action on any pending matter?

A. No, I do not. I had very little contact with Mr. Earl, except when I came out here I always called on him. He was a good friend of mine, and I always made it a point to call on him and we

(Testimony of James B. Black.)

always discussed the affairs of the company, but I spent very little time with him and I had no regular communication with him. As far as I know, that dividend matter was the only matter that we ever discussed from New York—that is, that I ever discussed from New York with him.

Q. With the exception of Mr. Hockenbeamer's asking your views and discussion regarding interest rates, market and spread in connection with the 1935 refunding operations, do you ever recall of you or anyone else in the North American Company ever having been asked your views during that period of 1930 to 1935 on any pending matter while it was under consideration?

A. No, I have no such recollection. I don't think there ever was any such request.

Q. And did you ever, with the exception of the dividend matter, express your views or that of the North American Company or any of its officers with respect to any matter which was pending before the P. G & E.?

A. Well, probably in the discussions with Mr. Hockenbeamer [1048] on matters—that is, in the times that we met—I probably did express opinions on subject that might come up. But they were purely expressions of opinions and I never made any effort whatsoever to direct or influence his judgment on them because I knew that his judgment would be far superior than mine, with my infrequent contacts. I don't recall any such inci-

(Testimony of James B. Black.)

dents, but in the very nature of the discussions I am sure that they would come up.

Mr. Phleger: Mr. Examiner, I suggest that this is an appropriate time to adjourn.

The Examiner: All right. We will recess to 2:00 o'clock.

(Whereupon, at 12:15 p. m. a recess was taken to 2:00 o'clock p. m. of the same day.)

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p. m.)

The Examiner: We will resume the hearing.

Whereupon—

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Direct Examination

(Resumed)

By Mr. Phleger:

Q. Mr. Black, in connection with the negotiations between the North American Company and the Pacific Gas and Electric Company in 1929 and 1930, was any discussion had as to whether or not the transaction should take, one, in the form of the

(Testimony of James B. Black.)

acquisition of the stocks by Pacific Gas and Electric Company, and the payment therefor should be made in its own stock, or in stock and part in cash, or all cash?

A. Yes. We discussed all possible combinations of cash, preferred stock and common stock, and it was agreed fairly early in the discussions that the only way to do it successfully would be through the exchange of Pacific Gas and Electric Company common stock for the securities to be taken over.

Q. What reasons were given during the course of negotia- [1050] tions for that conclusion?

A. Well, first, the principal assets that Western Power Corporation had were the common stocks of its subsidiaries, which would indicate an exchange of common stock. There was, perhaps, a shortage of equity investment in those companies which had been recognized by an advance by Western Power Corporation to the subsidiaries of, I think, $16,000,000 at the time that the negotiations started, and by the time they were completed and the transfer made it was in excess of $19,000,000. Quite likely, if the North American Company had continued to hold control of these companies in California, they would have converted at least a portion and, perhaps, a substantial portion of that advance into common stock investment.

Also, the North American Company had an income problem to meet and there was no way that they could see which would approximate the solu-

(Testimony of James B. Black.)

tion of that problem except to have the payment made in common stock, which was then carrying an 8 percent dividend. As it was, the North American Company's income from the investment which, of course, was on a cash basis, was slightly less than its consolidated income from the holdings which were exchanged for the Pacific Gas and Electric Company common stock, which affected the earnings per share of North American common.

Q. Was it the desire of both parties, as the discussions had proceeded for some time, that the transaction be consummated [1051] in the form that it finally was consummated in? A. Yes.

Q. What were the principal differences which led to the protracted negotiations?

A. Well, they largely centered around the estimates of what could be done by the consolidation of the properties in the way of economies, and who should share in those economies, how the economies should be shared in as between the then common stockholders of Pacific Gas and the new interest in common stcok. That really was the root of the discussions and, of course, it developed into all sorts of ramifications from there on.

Q. I take it from that that the real discussion was over the price?

A. Oh, yes. That was the center of the discussion.

Q. And the price, in turn, resolved itself into

(Testimony of James B. Black.)

questions as to who should participate in and a relative participation in the economies?

A. That is right. Of course, the whole thing centered around how much was to be paid and the initial figure that I had in mind was 1,000,000 shares of P. G. & E. common which, at $2 a share, would have made the North American Company substantially whole on an income basis; and Mr. Hockenbeamer's ideas, while never very definite, centered around a million and one-half shares for the entire holding, including the [1052] advances, and then got down somewhere around a million and one-half shares for the common and preferred alone and the advances to be taken care of in some other way perhaps.

Eventually Mr. Hockenbeamer and myself, I think we were pretty well pointing toward 1,800,000 to 1,900,000.

Q. With the final result as shown in the contract itself? A. Yes; 1,825,000.

Q. Mr. Black, immediately after the transaction what became of the $19,000,000-odd dollars indebtedness of the San Joaquin, Great Western Companies to the Western Power Corporation?

A. That was cancelled in accordance with the agreement.

Q. Were all other relationships between the North American Company and the Western Power Corporation on the one hand, and the San Joaquin

(Testimony of James B. Black.)

and Great Western Power Companies on the other hand cancelled?

A. Yes, with one minor exception: Mr. Hockenbeamer asked me to stay on as the Vice-President of the Great Western Power Company of California and of the California Electric Generating Company, a subsidiary of the Great Western Power Company of California, without salary for the purpose, and the sole purpose, of signing stock certificates, preferred stock certificates, which might be transferred in New York.

Q. How long did you remain in that capacity? [1053]

A. I remained in that capacity until those companies were dissolved. May I correct that? I remained as the Vice-President of those companies until 1935, November 11, when I was elected President of the Pacific Gas and Electric Company, and President of the California Electric Generating Company.

Q. Do you recall how many meetings of the Board of Directors of Pacific Gas and Electric Company you attended between 1930 until election as President?

A. Yes. I attended four; one was the meeting at which I was elected in June of 1930. One was some time in 1931 or 1932 when a meeting was held during one of our visits to San Francisco. The last two times were at two meetings which were held only a week apart in September of 1935. I happened to

(Testimony of James B. Black.)

be in San Francisco at the time and the company was preparing a registration statement which required frequent meetings of the Board, and I happened to be here just at that time, for about a week or ten days, and they held two meetings which I attended.

Q. Do you remember when Mr. Earl died?

A. Yes.

Q. That was in June of 1935?

A. June 1935; yes.

Q. And you were out here a month or so later?

A. I was out here in September of 1935.

Q. Did you have any discussions with Mr. Hockenbeamer, or make any suggestions that a successor should be appointed [1054] to Mr. Earl on the Executive Committee?

A. Mr. Hockenbeamer and I had some discussions of it, and we were both trying to think of a suitable local man and neither one of us had any ideas that were worth very much, and we just dropped the subject. He had, subsequent to that discussion, continued to send the reports which Mr. Earl had been sending on to me, and there just wasn't any particular purpose in changing that setup, and we just dropped the subject. It would probably have gone on indefinitely.

Q. So that following Mr. Earl's death, and your visit to San Francisco, you returned to New York without having made any suggestion for a successor and with the matter dropped, as you say?

(Testimony of James B. Black.)

A. That is correct.

Q. Now, that was September 1935 and you saw Mr. Hockenbeamer during that visit, did you not?

A. Yes.

Q. Did anyone anticipate that Mr. Hockenbeamer would not live very long after that time?

A. I certainly didn't. He looked as well to me as he ever had and I certainly anticipated that he would live for many years.

Q. When did you first hear of his death?

A. Mr. Downing wired me that he had died. I didn't even know that he was ill. [1055]

Q. That was on November 11, 1935?

A. Yes.

Q. What did you first hear with respect to your consideration as a possible president of the Pacific Gas and Electric Company?

A. Mr. Fogarty, J. F. Fogarty, who was then President of the North American Company, told me that Mr. Miller, Mr. C. O. G. Miller, had called him on the telephone—I think it was the day before, I am not quite sure as to that time—and had asked that he release me as Vice-President of the North American Company in order that I might be elected President of the Pacific Gas and Electric Company.

He said, Mr. Fogarty told me that Mr. Miller had told him that the directors had had some informal meetings and that they had come to that conclusion, and that they would like permission to talk to me.

(Testimony of James B. Black.)

Mr. Fogarty didn't indicate to me that he had agreed, and I protested to him that he should agree, and the discussion broke off without any commitment on his part to agree.

Later, I think the next day—I know it was some little time and I don't recall the exact interval but probably the next day—he told me he had again talked to Mr. Miller and he had agreed to release me, and he had agreed with Mr. Miller that it would be proper for Mr. Miller to call me.

Very shortly Mr. Miller did call me and he told me sub- [1056] stantially what Mr. Fogarty had told me, and asked me if I would take the position if the Board elected me, and I told him I would be delighted to do so.

He then asked me when I could come to California. I told him I would come within a few days, and I did.

In the meantime the Board of Directors of the Pacific Gas and Electric Company had elected me President.

I was in San Francisco for the better part of a week and then I returned to New York and was there for a couple of days, finally winding my affairs up there, and I came to California with my family about the first week or the second week of December.

Q. Do you recall, Mr. Black, the conversation over the telephone with Mr. Miller, after the first conversation you have testified to, in which he asked

(Testimony of James B. Black.)

you with reference to your future relations with the North American Company?

A. Yes. He called me very shortly—I think it was only a few minutes after, certainly not longer than during the day sometime—and said that one of the directors had raised the question as to whether I was going to continue any association with the North American Company.

I told him most certainly not, and he said that was his understanding, but that the question had been raised and he wanted to be in a position to assure the director that there would be no connection whatsoever between me and the North [1057] American Company or any of its associated companies.

Q. When, with relation to your departure for California, did you resign from your various positions with the North American Company?

A. It was either the day I was elected President or the day before; I don't recall which. It was either November 19th or 20th.

Q. And before you came out to California?

A. Oh, yes; and before I was elected.

Q. So that you resigned your positions with North American prior to your election as President of the Pacific Gas and Electric Company?

A. Yes. It may have been the same day, but it was done, as I had my letter of resignation in, before any action was taken out here.

(Testimony of James B. Black.)

Q. State, Mr. Black, what contacts you have had with the North American Company, its officers or agents, since you became President of the Pacific Gas and Electric Company.

A. I have been to New York twice; once in 1938 when I went to attend a convention of the Edison Electric Institute at Atlantic City, and then I went on to New York and spent about a week there. I visited in the offices of the North American Company at that time, and called on the officers, called on Mr. Williams, and perhaps spent altogether two or three hours in conversation with them. [1058]

The rest of the time I spent calling on former business friends up and down the street in New York, perhaps 25 or 30 of them, presidents of banks, partners in the investment banking houses, and other friends in industry there that I had known.

The second time was in June of this year when I went to New York to attend a Board meeting of the Equitable Life Assurance Society of New York.

After I had finished that business I did about the same thing that I did in 1938, spending about a week around New York.

Q. During your visits, those two visits since 1935, did you discuss Pacific Gas and Electric Company affairs with the North American officers?

A. Yes. In a general way we discussed the affairs of the company, what the prospects looked like for business for the next few months, and the com-

(Testimony of James B. Black.)

pany's general position with the public and financially, and the general condition of business in the State, and the prospects for development in the future here in the State generally which, of course, is reflected in our development.

We talked generally about the position of the industry and had a general conversation about the different companies in the industry.

The war was also discussed, politics, and the usual things [1059] that men talk about when they get together.

Q. Did you ask for any advice or recommendations from them with respect to the P. G. & E. matters?

A. I did not. I have never asked for any advice since I have been here, except that I have called them occasionally, at the time we were selling some bonds, selling our bonds in 1936, to get their advice on what the market might be doing, the bond market might be doing in the immediate future, and get their ideas on prices for bonds, what the market might stand, as we got closer to the dates of our offerings.

That is the kind of information, of course, that I was getting from all directors and from any source which I could get.

Q. That was information, rather than advice, was it not? A. Yes.

Q. Were your conversations with them on those two visits any different than your conversations had been or would be with any large stockholder?

(Testimony of James B. Black.)

A. No.

Q. As a matter of fact, you have had conversations from time to time, more or less frequently, of the same character with other large stockholders, have you not? A. That is correct. [1060]

Q. For instance, have you had conversations with the President of the Sun Life Assurance Company on such matters? A. Yes.

Q. Now, how often, and on what occasions have you seen North American officers in San Francisco since November 1935?

A. Mr. Fogarty is the only man, North American Company officer, who has visited San Francisco, with the exception, I think, of one visit perhaps by Mr. Doolittle. He comes out, has come out, I think, with the exception of this year, to attend the Bohemian Grove Encampment. He usually gets in here on Saturday and goes immediately to the Grove where he spends a week or two weeks, and returns Sunday, and usually leaves on Monday for the east.

I try to get up to the Grove during the weekend and I see him up there occasionally.

Q. Have you discussed business affairs with him on those occasions?

A. No. That is not a business meeting.

Q. Who have been the representatives of the North American on the Board of Directors of the Pacific Gas and Electric Company since the death of Mr. Earl?

(Testimony of James B. Black.)

A. Mr. Fogarty, Mr. Doolittle and Mr. Freeman.

Q. Who are the present representatives?

A. Mr. Fogarty and Mr. Freeman.

Q. Mr. Freeman succeeded Mr. Doolittle, did he?

[1061]

A. Yes; at the time of his resignation as Vice-President of the North American Company. I think that was late in 1936.

Q. Since 1930 has the Pacific Gas and Electric Company had any contracts with the North American Company?

A. Never have had, except this contract for the acquisition of stock, for those holdings.

Q. Has the North American Company loaned to the Pacific Gas and Electric Company any money, or has the Pacific Gas and Electric Company borrowed any money from the North American Company? A. No; never.

Q. There has been no financial transaction between them so far as you know, with the single exception of the 1930 transaction?

A. That is correct.

Q. Have there been any changes in the general policies or organization of the Pacific Gas and Electric Company since you became President?

A. No; no substantial changes. Of course, our policies are developed and they are changing all the time. The policies and organization are not static. But there has been nothing of a radical nature in the way of changes.

(Testimony of James B. Black.)

Q. With respect to the membership of the Board of Directors of the company, do you recall the names of the directors who have been elected since you became President? [1062]

A. Yes. I think I can recite them.

Q. What has the usual procedure been in connection with the election of a director to fill a vacancy?

A. With the exception of the representatives of the North American Company, it has been my practice to canvass the field of likely directors. I always try to get someone who has a large stock interest and, at the same time, can contribute, in my opinion, to the company's affairs. As between the two I would rather have someone who didn't have a large stock interest and could make a contribution to the company's welfare, rather than the reverse. But we have been fortunate in being able, since I have been here, to get that combination.

Then I make my recommendation to the Executive Board or to the Board of Directors, or both. The matters are discussed, perhaps some alternative names are suggested, and when it is agreed that the proper person has been determined on I call on that man and ask him if he will serve if he is elected. Then if he agrees the Board takes action.

Q. Since you have been President the following persons have been elected directors: First was Mr. McIntosh on December 18, 1935. Will you tell why he was selected?

(Testimony of James B. Black.)

A. Mr. McIntosh had been very close to the company's affairs through his service on the Executive Committee and the Board in the absences of Mr. Frank B. Anderson, and his institution was one of our six principal depositaries here in [1063] San Francisco, and he is a man of the highest standing, a man of character and ability in the City, and has a substantial interest in the company in the way of holdings. I felt that he would be the most desirable man who was apparently available at the moment.

I canvassed that choice, I remember, particularly. It was made very shortly after I came here. I canvassed the suggestion informally with the members of the Board and I called on Mr. McIntosh after I had discussed it with them.

Q. I take it his appointment met with unanimous approval? A. It did; yes.

Q. Now, how about Mr. Wishon's election? How did that come about?

A. Mr. Wishon was at that time the president of the San Joaquin Light & Power Corporation and was taking an increasingly important position in the Pacific Gas and Electric Company affairs. He and his family were large stockholders in the company. He had a very intimate knowledge of the San Joaquin and Midland operations, and a good knowledge of the operations of the Great Western and Pacific systems. It was my belief that he could contribute to the company's welfare and would be a source of information to the other members on the

(Testimony of James B. Black.)

Board because of that knowledge, and I thought he ought to be on the Board of Directors. So I proposed his name to the Board and that met with unanimous approval. [1064]

Q. Now, Mr. Silas H. Palmer was elected in November 1936. How did his election come about?

A. In substantially the same way that I have described. I called on Mr. Palmer, after I knew his interest, the interest of his family and relatives, in the company's affairs. I had known him for about 20 years and I know he is a man with great experience in construction problems, and was a director, a man of business in the city, and I thought that he would, and I am sure he has made quite a contribution to the company's affairs.

Q. He is now a member of the Executive Committee?

A. He is now a member of the Executive Committee; yes.

Q. Mr. William W. Crocker was elected in October 1937? A. Yes.

Q. How did his election come about?

A. In exactly the same way. In addition, of course, his father and family had holdings in the company, or its predecessor companies going back for many years, very substantial holdings, and Mr. Crocker succeeded to his father's place in the business affairs of the Crocker family, and he was taking an increasingly important part in the general business affairs of the community.

(Testimony of James B. Black.)

Q. Mr. Henry D. Nichols was elected in March 1938? A. Yes.

Q. How did his election come about? [1065]

A. I had never known Mr. Nichols well before I came out here, but his name was suggested several times in the discussions as to a possible director.

Prior to the time of his election I made it my business to get fairly well acquainted with him. Because of his large holdings, and the holdings of his family, and his position in the community, it was very apparent, after we got to know the man, that he would be a very valuable director to us. When the opportunity came why he was unanimously elected by the Board.

Q. Was the question of the selection of these gentlemen by the Board taken up by you with the North American Company? A. It was not.

Q. Did the North American Company, prior to the election of these men, know that they were to be elected?

A. Not to my knowledge. I might qualify that by saying that perhaps at some time in conversation with them, knowing of their acquaintance with Mr. Wishon, I might have said that Emory was going on the Board, but I didn't in any way discuss the desirability of his going on the Board and in any way get their opinion as to whether he should go on the Board. But it is my practice occasionally to talk to Fogarty or, in his absence, perhaps with Mr. Freeman, and it is possible,

(Testimony of James B. Black.)

though I don't recall it, that in those conversations I might have mentioned that Emory was going on the Board. [1066]

Q. But with the possible exception of Mr. Wishon, you are sure that you didn't talk to North American about who was to be elected on Applicant's Board?

A. Absolutely. I don't think that any of the North American Company officers know or have any personal acquaintance with them.

Q. With respect to what might be termed the proxy machinery of the company, who acts as members of the Proxy Committee?

A. For many years the President, the Vice-President and General Manager and the Secretary have acted as proxies, and I carried that custom on at the time I came out here and have continued it.

It has been my practice each year to tell the Executive Committee or the Board of Directors what I am doing with respect to sending out the requests for proxies.

Q. Is it a fact that the same officers, that is to say, the holders of the same offices have acted as proxies for many years in the company?

A. Yes. I think, with relatively few exceptions, from the beginning.

Q. The President, Vice-President and General Manager and the Secretary?

A. And the Treasurer.

(Testimony of James B. Black.)

Q. I believe the record shows it is the Secretary.

A. In recent years—yes, that is correct. In recent [1067] years the Secretary and the Treasurer are the same man.

Q. Mr. Hockenbeamer, during his incumbency it was the Treasurer, too? A. Yes.

Q. And there has been no change in this practice during your administration? A. No.

Q. With respect to vacancies on the Executive Committee you have already testified as to the selection of Mr. Palmer. How did it happen that Mr. Livermore was selected as a member of the Executive Committee?

A. Mr. Livermore had been on the Board for, I think, about 20 years, and his father before him had had a very substantial interest in the company's affairs. Mr. Livermore is an engineer by training and, in addition, he has had a great deal of business experience, and it was my belief that he would be a very valuable man on the Executive Committee.

Under the by-laws it is my privilege to nominate the members of the Executive Committee and I nominated Mr. Livermore.

Q. The directors approved his nomination?

A. They did; unanimously.

Q. Did you take up the question of Mr. Livermore's nomination and election as a member of the Executive Committee with the North American?

A. No. [1068]

(Testimony of James B. Black.)

Q. Some questions were asked some of the witnesses as to whether or not Mr. Palmer's selection was taken up with the North American Company so that they would relinquish whatever rights they might have of having a director to fill the vacancy created by Mr. Earl's death. Did any such conversation take place?

A. No. We just went ahead and filled the vacancy.

Q. By the way, I forgot to ask you, Mrs. Black is a Californian, is she not?

A. She was born in Oakland.

Q. And her family has lived here for many years? A. Yes; from the 1850s.

Q. Do you onw any stock in the North American Company?

A. A small amount, I think 100, 102, or 105, or 110 shares.

Q. 105 or——

A. (interposing) I think it is 102 shares of the common stock.

Q. Do you own any securities in any North American affiliates or subsidiaries?

A. I do not.

Q. Since you became President of the company have there been any changes in the banking connections of the company—I refer to that by the ordinary banks of deposit?

A. Nothing, except that we are making changes from time [1069] to time in the small depositaries

(Testimony of James B. Black.)

in the country. Around the system we have about 260 of those. Occasionally a new one starts which can be useful to us, and occasionally there is a merger between two of them. Except for those changes there have been none.

Q. Has the company borrowed any money from banks within recent years? A. No.

Q. Have there been any changes in the transfer agents or registrars since you became president?

A. No.

Q. With respect to the matters of rate adjustments or rate changes, have any of those matters been taken up by you with the North American Company during your presidency?

A. Never before they have been decided on.

Q. After they have been decided on and have gone into effect knowledge of those changes goes in connection with the reports that are sent on?

A. Yes. Occasionally on an important matter I might call up and tell them, the North American directors, what perhaps might be made public tomorrow in the newspapers in order that they may be forewarned.

Q. But their advice or consent has never been sought on such matters? A. Never. [1070]

Q. With respect to refunding operations of the company, will you state generally what has been done since you have become President?

A. In 1936 we had three operations; One for

(Testimony of James B. Black.)

$90,000,000 in March; one for $30,000,000 in April; and one for $35,000,000 in October. Those were entirely—the money realized from the sale of those securities was used in its entirety for calling underlying bonds and bonds of the first refunding mortgage.

I would like to correct that. They were used—no, my original statement is correct.

Q. State how the head of the syndicate came to be selected?

A. Well, I called Mr. Blyth down to my office—I think it was in January of 1936—and asked him if he was in a position to head up our underwriting; that were were going to do some refunding that year, probably beginning immediately, and I wished to get the underwriting group in shape, and that I had decided that I would like to have his house head the group. As I said, I asked him if he was in a position to do so. He said that he was; that he would be glad to do so.

I then asked him to have his people get in touch with our people and get to work on a registration statement.

I asked him for his ideas on the underwriting group, and the participation of the different firms, which he agreed to [1071] give me, and we started to work.

Q. Had you been spoken to by any of the directors about Blyth & Co. previous to your talk with Mr. Blyth?

(Testimony of James B. Black.)

A. I had by one director. Mr. Chickering—I remember the incident very distinctly. I was lunching at the club and he was on his way out. He stopped at my chair and said that we ought to have Blyth & Co. heading our underwriting business, and he hoped that I would recommend that and see that it was done. He said that he had not been very happy with the situation as it then existed and he thought that Blyth ought to be given an opportunity to see whether they could do the job.

I told him that I wasn't particularly interested in that at the time; that I had too many problems to look after then, and that it was too far ahead to worry about.

Q. What were your reasons for deciding to recommend Blyth & Co. to head the syndicate?

A. They were the same reasons that I gave Mr. Hockenbeamer almost a year before: That Blyth & Co., and its predecessor, Blyth, Witter & Co., had been in the Pacific Gas and Electric business, and in the business of the San Joaquin Light & Power Corporation for a good many years; that they had built up a strong national organization and that they had developed a good distribution which was well recognized in the investment world; that they had been strengthening their New York office, and that in line with the general policy of [1072] many years standing of the Pacific Gas and Electric Company to do all the business that they could possibly do with local people, I thought at that

(Testimony of James B. Black.)

time, in the early part of 1935, and I still thought so in 1936, that they should, that he should give Blyth & Co. the opportunity of demonstrating what I felt they could do in the way of a successful heading of the underwriting group.

Q. When you took the matter up with Blyth & Co. did you state that it was your desire that they add local houses to the underwriting syndicate?

A. I did. I told them that one reason I was choosing them was because of the fact that they were the leading western house and that I felt that wherever there was a western firm that could contribute to the underwriting group that they should be taken in.

He asked me who I had in mind. I told him, and asked him to give me some suggestions and, as a result of it, we added to the original group, which Mr. Hockenbeamer had used in the previous year, six houses in addition to Blyth & Co.

Q. Are Bancamerica Company, Mitchum, Tully & Co., Elworthy & Co., William Cavalier & Co., Brush, Slocumb & Co. and Schwabacher & Co. the six California houses that you refer to?

A. They are.

Q. This recommendation that Blyth & Co. be requested [1073] to head the syndicate was communicated by you to the Executive Committee and the Board of Directors of the company, was it not?

A. One or the other, or perhaps both. I told them what I was going to do and asked if they had any

(Testimony of James B. Black.)

objections, and if they did have I would like to have them to determine what my course should be. Not only had they no objections, but they approved with great enthusiasm what I had proposed.

Q. In 1935 had Mr. Hockenbeamer communicated with you in connection with the proposed financing?

A. Yes. He called me, after he had it well on the way, several times—I wouldn't say he called me several times, but we had several conversations which were initiated by him. He was making inquiry with respect to the standing of the various investment houses. That was due to the fact that with the cessation of underwriting business by banking affiliates, which was required by the Bank Act, I think, of 1933, there were a great many changes in the investment banking world, and he being in San Francisco was anxious to get all the information he could on just where the strength lay both as to capital and as to general background and probable distribution ability.

We had several conversations on those points. I gave him all the information that I could get together on that.

Q. In connection with his request for information at [1074] that time you made the statements with respect to Blyth & Co. that you have testified to?

A. Yes. I remember that particular conversation well. He said he had been pestered by every bank-

(Testimony of James B. Black.)

ing house in the United States to head the business —that perhaps is a little exaggeration—but that he was fed up and annoyed about it and he wanted to get it settled quickly. He did ask me what I thought about it. I told him my first opinion, which I reserved the right to change after reflection, was that he ought to give Blyth & Co. the chance to head it up; that the alignment then made might carry through a good many years if the group was satisfactory.

Q. Was that suggestion, not a suggestion by you, but that response by you to Mr. Hockenbeamer's request the result of your own independent judgment, or was it a result of solicitations made by representatives of Blyth & Co.?

A. It was my own independent judgment.

Q. Has the North American Company, or its directors or officials, either at that time or at any subsequent time, made any requests or suggestions to you with respect to leadership of underwriting syndicates? A. They never have.

Q. Do you recall the circumstances in connection with the $90,000,000 issue in 1936, when Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. were added to the syndicate? [1075]

A. Yes.

Q. Do you know how that came about?

A. Yes. It came about perhaps out of an excess of caution. I know a good many of the other underwriters in the group felt it was. But it was

(Testimony of James B. Black.)

my first underwriting job after coming out here. It was the largest, I think, underwriting that had ever been attempted under the new Act. It was Blyth's first underwriting as a head of the syndicate. I just couldn't run any possible risk of it going wrong. I knew I had adequate distribution in the group, but I wanted to plug up every possible point of danger with such a large underwriting, and I asked Mr. Blyth to give me his suggestions as to some additional houses to be included in that group, and that group alone. I knew at the time that we organized the group and undertook the $90,000,000 operation, that we would in all likelihood proceed with a $30,000,000 operation 30 days later. My thinking in all of my negotiations with Blyth at that time ran to the two operations as really one. I told him at that time that there was no place for anyone, no place for such a large group, in my opinion, in the subsequent operations. He wasn't, I do not believe, particularly enthusiastic at the time about it. I know I had heard some grumblings from other members of the group because they felt that their participation would be unduly reduced by the addition of new members, but I, nevertheless, insisted and I [1076] think before we completed our conversations Mr. Blyth was entirely in accord with me, that some additional strength be included.

Those three houses were included and they were told that they would be included only for that particular operation.

(Testimony of James B. Black.)

Q. Do you recall whether the names of these three houses were submitted to you by Mr. Blyth or not?

A. They came out of the discussions. I don't recall—of course, they were all three prominent houses and both of us had them in our mind when the discussion began as possibilities. I don't remember just whether he boiled the suggestions down to the three, or whether I did. But we were in accord when we got through talking about them.

Q. Was the name of any of these three houses suggested by the North American Company or any of its officers? A. They were not.

Q. So far as you know they never knew they were in the syndicate until after the securities had been issued?

A. Well, I don't know. I may have told them in the conversations that I had with Mr. Fogarty with respect to price and market, told them what the group was, but at no time did I ever ask any advice from them as to whether they should be included or not.

Q. They were included, as a matter of fact, before——

A. (interposing) Yes. The decisions were made long [1077] before that. Of course, the first time that there would be any public knowledge of the makeup of the group would probably come some time during the registration period.

(Testimony of James B. Black.)

Q. How were the North American representatives that now serve on the Board designated?

A. Well, at the time I left New York I called to Mr. Fogarty's attention, a fact that he probably already knew, that my resignation would leave the North American Company with one representative on the Pacific Gas and Electric Company Board and asked him if he would not like to be elected, appointed a member of the Board. He said he would.

With respect to Mr. Freeman, I don't recall just how I was advised by the North American people of Mr. Doolittle's resignation and the suggestion that Mr. Freeman should serve in his stead, but no doubt the suggestion did come from them.

Q. Do you know whether it is the practice each year when the North American sends its proxy to suggest in its letter who it would like to have elected as its representatives?

A. That was done, but it hasn't been done recently. I know I did it a few times when I was in New York. I think in the last couple of years we have just gone ahead and included the then North American nominees in the slate of directors to be voted on by the stockholders without any suggestion.

Q. Do you recall in the latter part of 1936 that the rate of dividend on the common stock was increased? [1078] A. Yes.

Q. Will you state what took place before the

(Testimony of James B. Black.)

Board of Directors in connection with that dividend action?

A. I made the recommendation that the rate be increased. I felt that the company's position was such, and the prospects of earnings were such that it would be a justifiable action.

In 1935 the company earned $2.10, and in 1936 we earned $2.55, and at the time of the declaration of the dividend we knew pretty well what the earnings would be. A good many of our situations that resulted from the depression, such as reductions in wages of employees, and matters of that kind, had been cleared up, and I felt it was perfectly a safe move to make, and the Board agreed.

Q. You had no discussion with respect to that dividend increase with the North American Company, did you? A. No.

Q. You have already been shown Applicant's Exhibits 33 and 45? A. Yes.

Q. Is it a fact that the material in these exhibits is given to the directors, or members of the Executive Committee?

A. The material in them certainly is in such detail as they wish to discuss or take along with them.

Q. Now, with respect to Exhibit 45, do you read from [1079] Exhibit 45, or the same form, to the meeting of the Executive Committee?

A. Yes. I report from this statement at each

(Testimony of James B. Black.)

meeting after it is issued. It is issued monthly. I comment to them on the variations in the number of customers served, the gains or losses in sales of kilowatt hours to commercial classifications for the current month and for the year to date, the gains or losses in revenues of the several classifications of consumers for the month to date, and the changes in the average rates of revenues per kilowatt hour received from those classifications, and I report on the gas sales to the different classifications, both as to revenue and cubic feet sold; then I usually make some comment on the temperature conditions this year as compared with a year ago, which has quite an influence on our gas revenue. And such matters as I do not report on are always reported on by Mr. Downing, which relates to operating matters which may be contained in that report.

Q. Is it fair to say that the contents of those two exhibits, that is in the form shown by those two exhibits, the material that was discussed between yourself and Mr. Hockenbeamer in 1930 as being the type of material that should thereafter be sent to the North American representatives on the Board of Directors and Executive Committee?

A. That is correct. [1080]

Q. And that practice started then has continued up to the present date?

A. That is right. In substantially the same form, certainly the substance.

(Testimony of James B. Black.)

Q. Now, with respect to the annual report, the testimony shows that shortly after the final form of annual report is sent out to the stockholders copies of the printer's proof are circulated among all of the directors, including the North American directors?

A. We have tried to do that, but sometimes under the press of time we haven't been able to do it. But I think, since I have been out here, that once or twice I have been able to get preliminary copies of the report back in the hands of the North American directors on our Board, but never have I received any suggestion from them in time to be considered in the preparation of the report for that year. I try to get those copies in the hands of our local directors, and I think we have been fairly successful in that, before they go to print.

Q. Have you ever received any suggestions or comments from North American directors, or officers, with respect to salary matters of the Pacific Gas and Electric Company? A. Never.

Q. I neglected to ask you, Mr. Black, as to the number of shares of stock of the Pacific Gas and Electric Company [1081] which you own.

A. I own 1000 shares of common and 9 shares of preferred.

Q. Mr. Black, have you ever at any time, or in any connection, observed anything indicating that the Pacific Gas and Electric Company is controlled,

(Testimony of James B. Black.)

directly or indirectly by the North American Company, or that the management or policies of the Pacific Gas and Electric Company are subject to a controlling influence, directly or indirectly, by the North American Company? A. No.

Q. If the North American Company were to attempt to control or influence, directly or indirectly, the management or policies of the Pacific Gas and Electric Company would you oppose such attempt?

A. I would with every resource at my command.

Q. Do you think that the other directors of the Pacific Gas and Electric Company, with the exception of Mr. Freeman or Mr. Fogarty, would also oppose such attempt? A. I am sure they would.

Q. In the event that the North American Company were to attempt to control or influence the management or policies of the Pacific Gas and Electric Company do you think that it would be able to do so? A. No.

Q. If the North American Company attempted to secure [1082] sufficient proxies to obtain a majority of the representation at a stockholders' meeting, and such an attempt were resisted by the management and the San Francisco directors of Pacific Gas and Electric Company, do you think that the North American Company would be successful in its attempt? A. I am sure they would not.

Q. Why?

A. This company has a rather unique position

(Testimony of James R. Black.)

in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 percent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.

Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the [1083] side of the company in any such fight.

Q. Mr. Black, are you personally acquainted with a number of the large stockholders of the company who reside outside of the State of California?

A. Yes; I know a few of them.

Q. What corporations are you an officer or a director of, other than the Pacific Gas and Electric Company and its subsidiary companies?

(Testimony of James B. Black.)

A. I am a director and member of the Executive Committee of the Southern Pacific Company; I am on the Board of the Equitable Life Assurance Society of the United States; I am a director of the Home Fire and Marine Insurance Company, and of the Del Monte Properties Company.

Mr. Phleger: I suggest this is an appropriate time to recess.

The Examiner: We will take a short recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: We will resume the hearing now.

You had not completed, had you Mr. Phleger?

Mr. Phleger: No. I have a couple of questions.

By Mr. Phleger:

Q. Mr. Black, can you recall what the financial rating of the bonds of the Pacific Gas and Electric Company is?

A. The First Refundings are Al Poor's. [1084]

Q. Now, you have testified——

The Examiner (interposing): Pardon me. Did you say "1A"

The Witness: A1.

The Examiner: Not AA1?

The Witness: It is AA. AAA is the highest rating. We are second.

(Testimony of James B. Black.)

By Mr. Phleger:

Q. You testified at some length respecting the selection of Blyth & Co. to head certain bond syndicates of the company. I take it that there is no commitment with respect to underwriting syndicates by the company?

A. There are no commitments of any kind and never have been with Blyth or anyone else since I have been President of the company. Blyth knows that they were called in to do that first job, and, if they hadn't done it well, we probably wouldn't have done the second job. We certainly wouldn't have done it with them, and they know that they are subject to removal at any time if we feel that they are not doing the proper kind of a job.

Q. Those matters are decided as they come up?

A. That is correct.

Mr. Phleger: That is all.

The Examiner: Cross examine, Miss Calkin.

[1085]

Cross Examination

By Miss Calkin:

Q. Applicant's present interest in the Vallejo Electric Light & Power was acquired prior to the time you became its President? A. Yes.

Q. As President of the Applicant what contacts do you have with the Vallejo Electric Light & Power?

(Testimony of James B. Black.)

A. The only contacts I have had have been with the president, Dr. Casper, in an attempt to acquire the stock that he and his sisters own.

Q. The Applicant is desirous of acquiring all of the stock of the Vallejo Electric Light & Power?

A. If we can get it at the right price, yes.

Q. Mr. Coghlan is one of the representatives of the Applicant on the Board of Vallejo Electric Light & Power. Who is the other director? I have forgotten.

A. Mr. Straub, one of our attorneys.

Q. Is he an attorney in the employ of the Applicant? A. Yes, full time.

Q. As President of the Applicant you do not participate in the formulation or carrying out of the operating policies of the Vallejo Company?

A. I do not.

Q. Does the Applicant render any services, supervisory [1086] or otherwise, to Vallejo?

A. None whatsoever, except they might ask our engineering department for engineering advice. I understand that we do give them some engineering advice occasionally, merely as an accommodation.

Q. Is that billed to the Vallejo Company substantially at cost? A. Oh, I presume so.

Q. Could you describe the extent of the contact between the personnel of the Applicant and that of the Vallejo Company?

A. As far as I know, there is no contact except the contact that Mr. Coghlan and Mr. Straub would

(Testimony of James B. Black.)

have through the attendance of Board meetings and such advice as might be given or might be asked for by Dr. Casper in connection with any construction problems or engineering problems which he might have. Perhaps he might ask for some advice on rate structures. He is making a good many rate adjustments there. I don't know that that is a fact, but it is possible.

Q. Do you know by whom the Great Western Power Company of California or its predecessor company was organized? I don't mean the actual incorporators, but I mean the interests behind.

A. Great Western Power?

Q. Great Western Power of California.

A. Great Western Power of California was the successor [1087] to Great Western Power Company and that, in turn, was successor to Western Power Company, a California corporation. The group that organized that—this is largely hearsay—was Mr. E. T. Earl, Mr. Guy C. Earl and Mr. P. H. Wilson, and a group of eastern people, Mr. Edwin Hawley. I don't know just when these people came in. I don't know if they were original or not, but Mr. Hawley was one of the original group. The group developed to include Mr. Birchard, who was then Treasurer of the General Electric Company, and some of the Bedford family and the Pratt family who were connected with the early Standard Oil operations.

(Testimony of James B. Black.)

Q. Are they easterners?

A. All New York except the Earls.

Q. When was the first predecessor of that company organized? About when?

A. Well, it was in the early 1900s. The construction began in 1905 or '06, and the first power I think was delivered from the Big Bend plant in December of 1908.

Q. Were Mr. Earl and his brother the predominant Californians interested in that company?

A. I should say that his brother perhaps was the predominant Californian. I don't know. This is largely hearsay. It was long before my time.

Q. Well, during most of its corporate history was Great Western Power Company of California or its predecessor [1088] a subsidiary of Western Power Corporation? A. Entirely.

Q. And Western Power Corporation was always a holding company?

A. Yes. It had a predecessor corporation, too; that is, Western Power Company, and Western Power Corporation succeeded it. They were both New York corporations.

Q. But so far as you know those same persons that you have named were dominant in the first companies and their successors?

A. Yes, that is right. The group was, I think, quite cohesive all through, but just when each one came in I never did know. There was another man

(Testimony of James B. Black.)

whom I neglected to mention, and that is John R. Freeman who was an internationally known consulting engineer. He was also in the insurance business and he was quite active in the affairs of Western Power Corporation and was a substantial stockholder up to the time of his death.

Q. And those persons that you have named, generally speaking, were primarily interested in the company up until the time control of it was purchased by the North American people?

A. Yes. I think there were some deaths along there, but generally what I have said is true. Mr. E. T. Earl died. I don't know what happened to his holdings. Mr. Birchard died before 1925. I think the Pratt and the Bedford holdings [1089] were in the hands of members of the family at that time.

Q. In 1925 when the North American people acquired control of the Western Power Corporation it had only three principal subsidiaries, namely, the Great Western Power Company of California, San Joaquin Light & Power Company, and Midland Counties Public Service Corporation. Is that correct? A. That is correct.

Q. And it only recently had acquired control of the latter two?

A. That is correct. There were, of course, some subsidiaries of Great Western Power Company of California in addition to that, but they were not direct subsidiaries of Western Power.

Q. Feather River Power Company?

(Testimony of James B. Black.)

A. Feather River Power Company, California Electric Generating Company, and Napa Valley Electric Company. I guess Feather River Company was not acquired until afterward, but the others had been acquired and the property was in the process of being transferred to Great Western Power Company of California.

Miss Calkins: I have in my possession several balance sheets which have been furnished me by Mr. Freeman of the North American Company which I had intended to introduce when Mr. Freeman was on the stand, but inasmuch as it is not definite whether or not Mr. Freeman will testify in these pro- [1090] ceedings I am wondering if counsel for the Applicant, who has seen copies of these balance sheets, has any objection to my introduction of them into evidence.

Mr. Phleger: No, we will not object to them. We would like the privilege, if later check should show inaccuracies, of correcting them. But subject to that right we have no objection on counsel's statement that they were supplied from the source stated.

Miss Calkins: Yes. I think I showed Mr. Gerdes a copy of a letter that I received from Mr. Freeman when these were sent.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: On the record.

Miss Calkins: I should like at this time to introduce in evidence as Commission's Exhibit No. 31

(Testimony of James B. Black.)

the balance sheet of the Western Power Corporation as of August 31, 1925. And to introduce an exhibit as Commission's Exhibit No. 32, a consolidated balance sheet of the Western Power Corporation and subsidiary companies as of the same date, August 31, 1925.

The Examiner: Under the circumstances stated they will be received in evidence and marked, respectively, Commission's Exhibits 31 and 32.

(The balance sheets above referred to were marked Commission's Exhibits 31 and 32, respectively, and were received in evidence.)

[1091]

By Miss Calkin:

Q. When and how did the North American Company acquire control of the Western Power Corporation?

A. Control of Western Power Corporation by North American Company took place in the latter part of 1925 and that control was acquired through an exchange of stock, an offer made by North American Company to the stockholders of the Western Power Corporation. That was pursuant to an agreement between Mr. Wilson, I think, for the Western Power Corporation and Mr. Dame for the North American Company.

Q. Do you recall on what basis the stock of the North American Company was exchanged for the stock of the Western Power Corporation?

(Testimony of James B. Black.)

A. I think it was one and a quarter shares of North American Company stock for one share of Western Power common—that is, North American common—and there was an offer made for a limited amount of Western Power Corporation preferred, and I think that was limited to 25,000 shares of North American Company $50 share preferred, which was offered in exchange for one share of $100 Western Power Preferred stock with four-fifths, I think, of a share of North American Company common.

Q. Were you a member of the Board of the Western Power Corporation between 1925 and 1930?

A. I was made a member of the Board of Western Power Corporation in November, I think, of 1926. [1092]

Q. And how long did you serve in that capacity?

A. I served until I resigned in November of 1935.

Q. Were the other members of the Board of that company associated with the North American Company?

A. I think all of them were, yes.

Q. Where were the main offices of the Western Power Corporation between 1925 and 1930?

A. 60 Broadway, New York.

Q. What were the principal activities of the Western Power Corporation during that period?

(Testimony of James B. Black.)

A. Well, it was just a holding company. It just held the stocks of the California subsidiaries which it controlled and advanced those subsidiaries funds for corporate uses.

Q. It carried on its activities, generally speaking, through the representatives of the North American Company?

A. Yes. They were substantially identical.

Miss Calkin: I should like to introduce in evidence as Commission's Exhibit No. 33 the balance sheet of the Western Power Corporation as of December 31, 1929. And as Commission's Exhibit No. 34 the consolidated balance sheet of Western Power Corporation's subsidiary companies as of December 31, 1929. And the balance sheet of the Western Power Corporation as of Febuary 28, 1930 as Commission's Exhibit No. 35.

The Examiner: The three documents just offered and described will be received, respectively, as Commission's [1093] Exhibits 33, 34 and 35.

(The balance sheets above referred to were marked Commission's Exhibits Nos. 33, 34 and 35 and received in evidence.)

Mr. Phleger: Subject to correction.

The Examiner: Subject to the same conditions as the others, namely, corrections if there are found to be any errors.

(Testimony of James B. Black.)

By Miss Calkin:

Q. I believe you testified on direct examination, Mr. Black, that the negotiations which culminated in the 1930 acquisition by the Applicant of the securities of the subsidiaries of Western Power Corporation were initiated by Mr. Hockenbeamer?

A. That's correct.

Q. Would you state that the applicant was more aggressive than was the North American Company in bringing about a consummation of the transaction? A. Yes.

Q. In what respects did you then consider the deal advantageous from the standpoint of the North American Company?

A. It removed the hazards of competition, which I have testified to previously. It rounded out the Pacific Gas group into a large system which could be very economically operated and which, through the elimination of that competition and because of the increase in its size, would have a great deal [1094] better credit than would be enjoyed by either group operating independently. It, through these economies, permitted reductions in rates and improved service through the larger group to the customers, which was a desirable and a sound development. And it gave the North American Company an investment in a situation which to my mind would be second to none from an operating and territorial standpoint to any other situation in the United States.

(Testimony of James B. Black.)

Mr. Black: I hand you what has been marked for purposes of identification Commission's Exhibit No. 36, which purports to be a photostatic copy of a memorandum from Mr. Gruhl to Mr. Dame dated October 23, 1929, and will ask you if you can identify that document.

A. I don't know that I ever saw it. Do you want me to identify the substance?

Miss Calkin: There are similar documents here of this nature which, I might say, are copies of documents which I took from the files of the North American Company. And on that statement I wonder if the Applicant has any objection to their admission.

Mr. Phleger: No. On the statement and assurance of counsel that these are copies of documents taken from the North American Company files, we have no objection to their introduction.

Miss Calkin: I offer in evidence Commission's Exhibit [1095] No. 36.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 36.

(The document above referred to was marked Commission's Exhibit No. 36 and received in evidence.)

By Miss Calkin:

Q. As of October 23, 1929 I believe you testified that Mr. Dame was president of the North American Company?

(Testimony of James B. Black.)

A. Yes, that's correct.

Q. And what was Mr. Gruhl's position?

A. He was Vice-President and General Manager.

Q. Are either of these gentlemen now living?

A. No.

Q. Did Mr. Gruhl later become President of the North American Company? A. He did.

Q. He was Mr. Dame's successor, was he not?

A. Mr. Gruhl became President and Mr. Dame became Chairman of the Board of the Company.

Q. And I take it from this memorandum that you were in California carrying on negotiations as of the date of the memorandum?

A. Yes. That's about the time that I was in California. Yes. This memorandum starts out by saying that "Black advised by telephone today . . ." so I obviously was. [1096]

Miss Calkin: I now offer in evidence as Commission's Exhibits Nos. 37, 38 and 39 these memorandums. The one marked Exhibit No. 37 is dated October 28, 1929, with the typewritten signature "Edwin Gruhl".

The other two memorandums are dated October 28, 1929 and unsigned. These letters are photostatic copies of originals which I found in the files of the North American Company, and I would like to ask this witness if he is acquainted with those memorandums.

(Testimony of James B. Black.)

The Examiner: The exhibits will be marked as Commission's Exhibits 37, 38 and 39, respectively, as described.

(The photostatic copies of letters above referred to were marked Commission's Exhibits 37, 38 and 39 respectively for identification.)

The Witness: Well, I don't know that I saw the one dated October 28. It is another memorandum of a telephone conversation with me evidently when I was in San Francisco.

The Examiner: That is the one marked "37".

The Witness: This is a memorandum of the same date, and I don't know that I ever saw it. I don't recall that I ever did. It was prepared evidently in New York while I was in San Francisco.

The Examiner: Exhibit 38 consists of two pages.

The Witness: This is another memorandum of the same date. I don't recall that I ever saw it, but no doubt I prepared some of the data on which the memorandum was based. [1097]

By Miss Calkin:

Q. You don't know who might have prepared those memorandums?

A. No. I presume that Mr. Gruhl did or it was done under his direction. It looks as though that it was his work. I can only guess at that, though. I don't recall ever having seen it.

Miss Calkin: Does counsel for the Applicant have

(Testimony of James B. Black.)

any objection to admission into evidence of Exhibits 37 to 39, inclusive?

Mr. Phleger: No. With respect to these documents, without admitting their relevancy, we will waive proof that these are copies of documents found in the North American Company's files, on counsel's assurance.

The Examiner: Yes. I already suggested that these latter three be marked as Commission's Exhibits upon the statement of counsel, as I understood he intended to relate it to all of this series of documents which you obtained from the files of the company. That they would be admitted on that basis, and they were admitted. Exhibit 39 consists of four pages.

(The photostatic copies of letters above referred to were marked Commission's Exhibits 37, 38 and 39 respectively and were received in evidence.) [1098]

By Miss Calkin:

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 40, and I will ask you if you can identify that document?

A. Yes. This is a telegram from Mr. Gruhl to me at the Palace Hotel in San Francisco.

Miss Calkin: We offer in evidence Commission's Exhibit No. 40.

(Testimony of James B. Black.)

A. (continuing) I don't remember it, but it no doubt was sent.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 40.

(The telegram above referred to was marked Commission's Exhibit No. 40 and received in evidence.)

By Miss Calkin:

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 41 and ask you if you can identify that document.

A. That's the telegram from me to Mr. Gruhl when I was in San Francisco.

Miss Calkin: We offer in evidence Commission's Exhibit No. 41.

The Examiner: This telegram bearing date October 31, 1929 will be received in evidence and marked Commission's Exhibit No. 41. [1099]

(The telegram referred to was marked Commission's Exhibit No. 41 and received in evidence.)

By Miss Calkin:

Q. Mr. Black, did you follow the advice given in the telegram constituting Commission's Exhibit No. 40? A. I presume I did, yes.

Q. Were the negotiations halted as of that date, the date of that wire?

A. Well, they were suspended, I should say, ap-

(Testimony of James B. Black.)

proximately at that date. They might have continued a few days longer.

Q. And when were they resumed?

A. That was in November of the same year.

Q. Did you return to New York approximately the date of Commission's Exhibits Nos. 40 and 41, namely, around October 30?

A. That is my recollection; about that time.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 42 and I will ask you if you can identify that document?

A. Yes. This is apparently a memorandum prepared by me on February 28, 1930.

Miss Calkin: We offer in evidence Commission's Exhibit No. 42.

The Examiner: This memorandum, consisting of six pages, will be received in evidence and marked Commission's Exhibit [1100] No. 42.

(The memorandum referred to was marked Commission's Exhibit No. 42 and received in evidence.)

By Miss Calkin:

Q. To whom did you submit this memorandum, Mr. Black?

A. Oh, I don't remember. I presume I prepared it for Mr. Gruhl or Mr. Dame, or both perhaps, from my own information. I don't remember.

Q. Were the facts and matters therein set forth

(Testimony of James B. Black.)

true at that time to the best of your knowledge and belief?

A. To the best of my knowledge, yes.

Q. Did the expression of opinion contained therein constitute your best judgment based upon the facts then in your possession?

Mr. Phleger: What expression of opinion.

A. I don't know whether there was any expression of opinion. I think it was merely a factual statement.

The Examiner: Do you have a copy of that, Mr. Phleger?

Mr. Phleger: Yes. I don't see any expression of opinion.

A. (continuing) I notice in the second paragraph there is an expression of opinion as to what the operating savings would be through consolidation of Western Power subsidiaries with Pacific Gas and Electric Company, and that is substantially my opinion. The financial savings was my opinion at that time. [1101]

The Examiner: Do you recall the question?

Miss Calkin: I think the witness has answered it. I mean, he has pointed out places in the memorandum that did contain expressions of opinion.

The Witness: This memorandum is evidently one that I had prepared subsequent to the conversations which we had with Mr. Hockenbeamer in New York, and was either for my information as a summary of the situation as I understood it at that time or

(Testimony of James B. Black.)

perhaps for the information of other officers of the company. I don't recall.

By Miss Calkin:

Q. In the last paragraph on page 4 of that Exhibit No. 42 you stated "After completion of consolidation, we will have three members on the Board and one member on the Executive Committee which is to be increased to six members. If the Board or Executive Committee is further increased our membership will be increased proportionately." Between what persons was the understanding as to North American Company's representation on the Board reached?

A. Mr. Black. I think it would be proper to say that there was no closing of the understanding until the discussions in New York. Now, those discussions were carried on largely in my office and in Mr. Dame's office, but Mr. Dame and Mr. Gruhl sat in during parts of those discussions. Probably one of them was present at all times. And I presume that [1102] the final settlement of all questions, including the question of representation on the Board, could be said to have been reached at that time, though many of them had been substantially settled in previous conversations.

Q. Do you know whether or not such representation had been approved by the Applicant's Board as it was then constituted as of that date?

A. No, I do not. I don't think that the North

(Testimony of James B. Black.)

American Company Board had taken any action as of that date on any phase of it.

Miss Calkin: I mean Applicant's Board.

The Examiner: The question is as to the Applicant's Board.

The Witness: I don't know that its Board ever formally approved it.

By Miss Calkin:

Q. In the same paragraph of Exhibit 42 on page 4 you further stated "Standard Gas & Electric Company members were required to give certain written assurances as to their participance in the Company's affairs and relating to the disposal of their stock, which we will not do". What were the assurances given by Standard Gas & Electric Company that you referred to?

A. Mr. Hockenbeamer informed me that at the time that the Pacific Gas & Electric Company acquired control of the [1103] Western States properties and Pacific Gas, I think, paid for that control 260,000 shares of common stock that the Pacific Gas and Electric Company officers reached a written memorandum agreement with Mr. O'Brien, who was at that time President of the Standard Gas & Electric Company, with respect to the delivery of proxies to the Pacific Gas and Electric Company management for stock held by Standard Gas & Electric Company in connection with the election of directors of Pacific Gas and Electric

(Testimony of James B. Black.)

Company. I think that proxy ran for 7 years. I am not sure of that. That is my recollection of it.

Q. Have you ever seen a copy of that written memorandum?

A. I have looked at it. I haven't got it very clearly in mind.

Q. It is in the files of the Applicant?

A. Yes, yes. I looked at it here a few months ago.

Q. What assurances did they give in reference to the disposal of their stock?

A. There was a provision that if they ever decided to dispose of their stock that they would give the Pacific Gas and Electric Company notice of such desire, and the Pacific Gas and Electric Company, I think substantially, had the option to purchase the stock at whatever price they decided that they would dispose of it at. That is substantially, as it may be in somewhat different form or there may be somewhat different provisions. But I think that covers it. [1104]

Q. Then the Standard Gas & Electric Company assurances were in the form of an irrevocable proxy to the Pacific Gas and Electric Company?

A. No. It was in the form of an agreement to give them a proxy, as I recall it. The agreement was signed by Mr. O'Brien, I believe, or Mr. Creed or Mr. Hockenbeamer. Mr. Creed was then President of the Pacific Gas and Electric Company.

Q. But that agreement is no longer in effect?

(Testimony of James B. Black.)

A. No, no. Mr. Hockenbeamer asked me for a similar agreement, which I treated with some levity, and he said "Well, I will have to cancel the other one". And I guess he did.

Q. Does that agreement set forth the extent to which the Standard Gas & Electric Company would be permitted to participate in Applicant's affairs?

A. I don't recall that it does.

Q. Your only recollection is in regard to the proxy?

A. There may have been some statement with respect to interference in the executive affairs. I think there was, yes, a statement to the effect that Standard Gas & Electric Company abstain from any interference in the management of the Pacific Gas and Electric Company affairs.

Q. You say that Mr. Hockenbeamer requested the North American Company to enter into a similar written arrangement? A. Yes. [1105]

Q. Did you submit that matter to Mr. Dame and Mr. Gruhl?

A. Well, I probably told them about it, but I certainly wouldn't have asked them whether I should have agreed or not.

Q. And why? What are your reasons?

A. Well, my reason: Insofar as my recommendation went, I would never agree that anyone with an investment of $60,000,000 in a property tie their hands against representation on the Board of Directors of that company.

(Testimony of James B. Black.)

Q. What about participation in the affairs of such a company?

A. Well, I have that understanding with Mr. Hockenbeamer that the North American Company officers, insofar as I was able to direct it, would never interfere in any way with the management of the company.

Q. Did that agreement grow out of his request for a written assurance similar to that given by the Standard people?

A. I can't say that. I don't know. Probably the two were discussed at the same time.

Q. Just what assurances did you give Mr. Hockenbeamer relative to the future participation of the North American Company in the Applicant's affairs?

A. Just that: That insofar as I was able to direct the policy, there never would be any interference in the Pacific Gas and Electric Company affairs or management by [1106] any of the officers of North American Company.

Q. To what extent was it then anticipated that the North American Company would participate in Applicant's affairs?

A. Well, they would participate in their affairs only with respect to what they could give, such help that might be requested by Mr. Hockenbeamer or other officers of the company. The North American Company's interest was solely directed towards increasing the value of the company's stock

(Testimony of James B. Black.)

of which they held a substantial interest, and insuring a proper rate of income on that investment which they held. [1107]

Q. Did you discuss this matter with your superiors, Mr. Gruhl and Mr. Dame?

A. Oh, yes. I discussed all phases of the matter with them.

Q. Were the representations made by you to Mr. Hockenbeamer the result of agreements reached between you and Mr. Gruhl and Mr. Dame?

A. Well, I think there was no doubt that we had a meeting of minds on it, but I recall distinctly that at the time that Mr. Hockenbeamer first brought the question up that I gave him the answer there. I don't remember specifically, but I undoubtedly told Mr. Dame and Mr. Gruhl of the conversation, and there never was any difference of opinion that I recall between the three of us.

Q. So they were familiar with the assurances that you had given Mr. Hockenbeamer on that subject?

A. Oh, quite, yes. And, as I say, the matter was undoubtedly discussed with him in New York, at which they were present.

The Examiner: That is upon Mr. Hockenbeamer's visit to New York?

The Witness: Yes. That is in February of 1930.

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit

(Testimony of James B. Black.)

No. 43, which [1108] is a photostatic copy of a memorandum dated March 5, 1930, bearing the typewritten signature of Mr. Gruhl and will ask you if you are able to identify that document?

A. This is a memorandum prepared by Mr. Gruhl. I presume it is a summary of his views of the transaction whereby North American Company through Western Power Corporation acquired 1,825,000 shares of the common stock of the Pacific Gas and Electric Company. I don't know the purpose of it.

The Examiner: Have you ever seen it before, so far as you know?

The Witness: I don't recall it. Quite likely I did.

Miss Calkin: We offer that in evidence for the same reasons that we have advanced heretofore.

Mr. Phleger: No objection on the same understanding.

The Examiner: Subject to the same understanding it will be received in evidence and marked Commission's Exhibit No. 43, the document consisting of 6 pages.

(The 6-page document referred to was marked Commission's Exhibit No. 43 and was received in evidence.)

Miss Calkin: We offer in evidence as Commission's Exhibit No. 44 photostatic copy of a letter bearing the stamped signature of F. L. Dame, dated April 2, 1930, addressed to Mr. Hugo Wurdack. Do

(Testimony of James B. Black.)

you have any objections to its admission into evidence?

Mr. Phleger: On the same understanding. [1109]

The Examiner: The same basis.

By Miss Calkin:

Q. Do you know who Mr. Wurdack was, Mr. Black.

A. That name sounds familiar. Is he in St. Louis?

The Examiner: St. Louis, Missouri. It will be received in evidence, meanwhile, as Commission's Exhibit 44, being a two-page letter.

(The 2-page letter referred to above was marked Commission's Exhibit No. 44, and was received in evidence.)

The Examiner: Do you want to examine it, Mr. Black?

A. (continuing) —I think he was the representative of an estate which owned quite a block of North American Company common stock, but I am not certain of that. The name sounds familiar.

Miss Calkin: I now offer in evidence as Commission's Exhibit No. 45 photostatic copy of a letter dated April 3, 1930, stamped with the signature "F. L. Dame" and directed to Mr. W. B. Joyce. Does counsel for the Applicant have any objection to the admission of that letter into evidence?

Mr. Phleger: No objection on the same basis.

(Testimony of James B. Black.)

The Examiner: On the same basis it will be received as Commission's Exhibit No. 45.

(The photostatic copy of letter was marked Commission's Exhibit No. 45, and was received in evidence.) [1110]

By Miss Calkin:

Q. Who was Mr. Joyce, if you know, Mr. Black?

A. May I see the exhibit, please?

Mr. Joyce was the president or chairman of the Board of the National Surety Company. I think he at this date, April 3, 1930 was on the Board of the San Joaquin Light & Power Corporation and this letter has to do with his resignation from that Board in connection with the acquisition of control of the Western Power subsidiaries by Pacific Gas and Electric Company.

Q. So far as you know, he was not a director of Western Power Corporation?

A. I don't think so.

Miss Calkin: We now offer in evidence as Commission's Exhibit No. 46 a photostatic copy of a letter dated April 7, 1930, bearing the stamped signature of "F. L. Dame" and addressed to Mr. Hockenbeamer.

The Examiner: On the same basis, I presume there is no objection. The letter of April 7, will be received in evidence and marked Commission's Exhibit No. 46.

(The photostatic copy of letter was marked Commission's Exhibit No. 46 and was received in evidence.)

(Testimony of James B. Black.)

By Miss Calkin:

Q. Mr. Black, was it your understanding at the time [1111] the transaction whereby Applicant acquired the securities of the subsidiaries of Western Power Corporation took place that the nature of North American Company's contact with the Applicant would be substantially the same as they then were with the Detroit Edison Company and the North American Light & Power Company?

A. Well, I don't believe they had control of North American Light & Power at that time, and there was no comparison, as I recall, with Detroit, though there might have been. The agreement was just substantially as I have outlined it and had no relation to any other situation that the North American Company had an interest in.

Miss Calkin: We now offer in evidence as Commission's Exhibit No. 47, photostatic copy of a telegram dated June 6, 1930 from Mr. Black to Mr. Guy C. Earl.

And as Commission's Exhibit No. 48, photostatic copy of a telegram dated June 9, 1930 from Mr. Black to Mr. Hockenbeamer.

And as Commission's Exhibit No. 49, photostatic copy of a telegram dated June 11, 1930 from Mr. Black to Mr. Hockenbeamer.

And as Commission's Exhibit No. 50, photostatic copy of a telegram also dated June 11, 1930 from Mr. Hockenbeamer to Mr. Black.

(Testimony of James B. Black.)

And as Commission's Exhibit No. 51, photostatic copy [1112] of a telegram of the same date, namely June 11, 1930, from Mr. Bosley to the North American Company, "Attention Mr. Black".

And as Commission's Exhibit No. 52, photostatic copy of a telegram dated June 11, 1930 from Mr. Hockenbeamer to Mr. Black.

The Examiner: These documents will be received in evidence as Commission's Exhibits with the numbers as indicated.

(The documents above referred to were marked Commission's Exhibits Nos. 47, 48, 49, 50, 51 and 52, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, can you explain the controversy reflected in the telegrams which were exchanged on the 11th day of June, 1930?

A. The controversy relates as to whether Pacific Gas and Electric Company should pay interest on the advances or be responsible for interest on advances made by Western Power Corporation to the California subsidiaries from some date in February to the date of actual transfer of the securities of the Western Power Corporation subsidiaries to Pacific Gas and Electric Company.

Q. Whose views prevailed in that matter?

A. I think the Pacific Gas paid the interest. I have forgotten. In the March, 1930 agreement there was a [1113] provision that the dividends and in-

(Testimony of James B. Black.)

terest would be adjusted from the date of the agreement to the date when the actual transfer was made, because no one knew exactly what that date would be. There was a date specified in the agreement, but it was pretty well understood that we never would be able to complete all of the formalities which would be necessary in order to consummate the agreement by that time and that an extension would be necessary. Now, whether that extension would be 30, 60, 90 days or six months, no one could say. And, as I recall, that controversy referred to in the telegram related solely to the interest on the advances from some date in February or March to the actual delivery date of the securities and cancellation of the advances.

Q. Mr. Black, in your opinion, was there arm's-length bargaining between the Applicant and the North American Company preliminary to the execution of the March 29, 1930 contract?

A. I should say there was; very definitely.

Q. Between the period in 1930 to 1935 or to the date you became president of the Applicant were you a director of any of the affiliates or subsidiaries of the North American Company?

A. Well, the subsidiaries of which I was a director [1114] were Western Power Corporation and North American Utilities Securities Company, I think. I have forgotten the exact name.

Q. But you were an employee of only the North American Company?

(Testimony of James B. Black.)

A. Technically my salary came from Western Power Corporation. It did in the early period of my employment in New York. Perhaps it came from North American Company in the latter period, I don't know. I don't recall technically, but practically there was no difference.

Q. And you resigned your directorship in the North American Utilities Company about the time you became president of the Applicant?

A. The North American Utilities Securities Company on the same date as I resigned from Western Power Corporation and from North American Company.

Q. What changes, if any, occurred in the directorate of the subsidiaries of the Western Power Corporation after the exchange of securities?

A. You mean after Pacific Gas and Electric Company acquired control?

Q. That's right.

A. Well, as I recall, all of the directors of the subsidiaries were either directors or officers of Pacific Gas and Electric Company or employees of Pacific Gas and [1115] Electric Company.

Q. Did the North American Company have any representation on the Boards of the three companies acquired by the Applicant after 1930?

A. No.

Q. Who were the operating heads of the Great Western Power Company of California, the San Joaquin Light & Power Corporation and Midland

(Testimony of James B. Black.)

Counties Public Service Corporation after June, 1930?

A. Mr. Wishon was president of the San Joaquin and Midland Companies and he was vice-president and assistant general manager of the Pacific Gas and Electric and, I believe, of the Great Western Power Company in California. Mr. P. M. Downing was vice-president and general manager of Pacific Gas and Electric Company and, I think, Great Western Power Company. He was vice-president, I believe, of the San Joaquin and Midland Companies. Mr. Hockenbeamer was president of the Pacific Gas and Electric Company and the chairman of the Board of the San Joaquin Company. Mr. A. G. Wishon was the vice-chairman of the Board of the San Joaquin Company. I think I am correct.

Q. Did Mr. Wishon and Mr. Downing in their respective capacities report to any representatives of the North American Company?

A. They did not. [1116]

Q. Did you have any business contacts with Mr. Downing or Mr. Wishon in connection with the operation of those then subsidiaries of the Applicant?

A. I did not.

Q. Could you describe briefly the activities of the Western Power Corporation from approximately July 1, 1930 until the date of its dissolution?

A. It gave its stockholders the right to sub-

(Testimony of James B. Black.)

scribe to Pacific Gas and Electric stock I think at $20 a share which it held. I don't recall any other corporate changes. It carried on no activities as a holding company. It was merely used to hold the 1,825,000 shares of Pacific Gas and Electric Company common stock until this subscription to the stockholders was made, and it then held I believe some cash and the balance of the unsubscribed Pacific Gas and Electric Company stock until its dissolution. At the time of its dissolution, which I think took place in 1936, it distributed the Pacific Gas and Electric Company stock and its cash which it held to its common stockholders after paying off its preferred stock pro-rata.

Q. Did the Western Power Corporation have any securities outstanding in the hands of the public as of the date of its dissolution?

A. I think it had only preferred stock. I am not sure of that. That is my recollection. In addition to its [1117] common stock, of course.

The Examiner: Was the common stock in the hands of the public?

The Witness: There was a small minority interest; quite small minority interest. Substantially all of it was owned by the North American Company.

By Miss Calkin:

Q. And this preferred stock was redeemed or called at the time of its dissolution?

(Testimony of James B. Black.)

A. I think it was paid off at par at the time of dissolution.

Miss Calkin: I wish to introduce in evidence as Commission's Exhibit 53 a balance sheet of the Pacific Gas and Electric Company and subsidiary companies as of June 30, 1930.

And as Commission's Exhibit No. 54, a balance sheet of the Western Power Corporation as of March 31, 1930.

And as Commission's Exhibit No. 55, a consolidated balance sheet of the Western Power Corporation and subsidiary companies as of March 31, 1930.

And as Commission's Exhibit No. 56, the balance sheet of the Western Power Corporation as of July 31, 1930.

As Commission's Exhibit No. 57, a chart showing the directors of the Western Power Corporation from January 1, 1930 to the date of its dissolution on May 2, 1936. [1118]

And as Commission's Exhibit No. 58 a balance sheet of the Western Power Corporation as of May 21, 1936.

Is there any objection to the introduction of those documents?

Mr. Phleger: No objection, subject to correction, if necessary.

The Examiner: All right. The documents which have been described and offered will be, subject to

(Testimony of James B. Black.)

that condition, received in evidence and marked as Commission's Exhibits 53 to 58 respectively.

(The documents referred to above were marked Commission's Exhibits Nos. 53, 54, 55, 56, 57 and 58, and were received in evidence.)

By Miss Calkin:

Q. Who is David R. Hawkins, Mr. Black, if you know?

A. He is a partner of Sullivan and Cromwell, a law firm in New York.

Q. And who was John Foster Dulles?

A. He was also a partner of Sullivan and Cromwell.

Q. C. R. Gantner?

A. Mr. Gantner was and is a lawyer in New York City and was a member of the firm which was counsel for Western Power Corporation at the time that North American Company obtained control.

Q. And who is Mr. Robert Sealy? [1119]

A. Robert Sealy is the treasurer of the North American Company.

Q. And Mr. Wilson, of whom you have spoken, is Mr. H. P. Wilson?

A. Mr. H. P. Wilson, yes. He was president of Western Power Corporation for many years.

Miss Calkin: This is a convenient stopping place for me.

The Examiner: By previous agreement we will re-

(Testimony of James B. Black.)

cess until Monday morning instead of until tomorrow morning at 10:00 o'clock.

(Whereupon at 4:30 the hearing in the above-entitled matter was adjourned to Monday, November 25, 1940, at 10:00 o'clock a.m.) [1120]

Proceedings

The Examiner: We will resume the hearing when you are ready.

Whereupon——

JAMES B. BLACK

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination

(Resumed)

By Miss Calkin:

Q. Mr. Black, do you know why——

Off the record.

The Examiner: Off the record.

(Remarks off the record.)

The Examiner: On the record.

Mr. Phleger: Mr. Black, you were asked on direct examination what the rating was of the bonds of the Pacific Gas and Electric Company. You replied "The first refundings are A-1 Poor's."

Then you testified it was AA.

(Testimony of James B. Black.)

The Witness: Well, I should have said it was AA Moody's. A-1—by that I mean A plus 1 star, or AA. But the rating should have been Moody's instead of Poor's.

By Miss Calkin: [1122]

Q. Mr. Black, do you know why North American has had only two representatives on Applicant's Board since the death of Mr. Earl, rather than 3, as contemplated when it acquired Applicant's stock?

A. Well, they haven't suggested anyone else. I don't know the reasons for it except as might have come out of our experience late in 1935 in conversations which I had with Mr. Hockenbeamer, after Mr. Earl's death, when we discussed a possible addition to the Board as a North American Company nominee and neither one of us had any ideas that were worth very much and we just dropped the matter and it has remained in that position ever since.

Q. Did you ever request Mr. Fogarty to have North American release its right to one director so that some local man might be selected?

A. No; no.

Q. The vacancy left by Mr. Earl's death was filled by a local man on your own initiative?

A. Yes.

Q. Do you know whether there is any correlation between your election to the presidency of the Ap-

(Testimony of James B. Black.)

plicant and North American's determination that its representation by two, rather than three members, was sufficient?

A. I am sure there was none.

Q. Did you have any discussions with Mr. Fogarty [1123] regarding the reduction of North American's representatives from three to two members? A. No.

Q. After talking over the matter with Mr. Hockenbeamer in the early fall or late summer of 1935 upon your return to New York you never discussed the matter with Mr. Fogarty?

A. I may have, but if I did I told him that I had no recommendations to make with respect to filling that vacancy, and that Mr. Hockenbeamer had none, that either of us felt had any merit and we just agreed to let the matter ride.

Q. Did Mr. Fogarty, Mr. Williams, or anyone else associated with the North American Company ever tell you in substance that your presidency made North American's representation on the Board less necessary than it was during Mr. Hockenbeamer's lifetime?

A. Not to my recollection, I never heard of it.

Q. If Mr. Hockenbeamer were now president of the Applicant, in your opinion, would North American have three representatives on the Applicant's Board?

A. I don't know. If were not able to make any

(Testimony of James B. Black.)

more progress in finding a suitable representative than we did in 1935 they would not.

Q. I believe you testified on direct examination that the membership of the Proxy Committee had been determined by you during your presidency in accordance with custom established [1124] during previous presidencies? A. That is correct.

Q. And you submit the names of those persons to the Executive Committee and the Board?

A. Yes. I tell them about the proxy statement and the makeup of the notice which goes to the stockholders.

Q. Who prepares the notice of the stockholders' meetings and the proxy statements?

A. That is prepared by Mr. Foote and Mr. Bosley and submitted to me, and I advise the Committee or the Board, or both, of the contents.

Q. Who prepares the minutes of the Board meeting at which the Proxy Committee is selected?

A. I don't believe that the Board actually selects the Proxy Committee. I don't know that there is any resolution passed.

Q. Does the Board approve the notice to stockholders of the annual meeting?

A. It has to; yes, it approves the notice of solicitation of proxies; yes.

Q. Who prepares the minutes of that meeting?

A. Mr. Foote. He prepares the minutes for all meetings.

(Testimony of James B. Black.)

Q. Who mails the proxy notice to the stockholders?

A. That is under Mr. Foote's direction. [1125]

Q. To whom are those proxies returned?

A. I believe they are returned to Mr. Foote.

Q. They are returned to the office of the company located here?

A. Oh, yes; at 245 Market Street.

Q. How does the North American Company make known to you what individuals it desires elected as its representatives?

A. Mr. Fogarty's election resulted from the suggestion which I made to him before I left New York, calling to his attention that the North American Company had only one representative on the Board as a result of my resignation and Mr. Earl's death five months previous thereto. I don't believe there was any discussion about the re-election of Mr. Doolittle, who was then the sole representative of the North American Company early in 1936. When Mr. Doolittle resigned late in 1936 I was told by Mr. Fogarty that they would like to have Mr. Freeman succeed him, and he was appointed by the Board to succeed Mr. Doolittle. I don't believe I have had any word from the North American Company nominees with respect to their re-election in subsequent years. I have just taken it as a matter of course that, in the absence of any advice, they would like to have the nominees that were then serving re-elected.

(Testimony of James B. Black.)

Q. And you include Mr. Freeman's and Mr. Fogarty's name in the proxy statement which is mailed to the North [1126] American Company which is also mailed to other stockholders?

A. To all stockholders; yes.

Q. And you have included those names without any communication from the North American Company prior thereto?

A. I don't recall any communications in the last couple of years. I think, in the absence of any communication, I would just go ahead and make up the slate including those men.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 59 and 60; No. 59 being a letter dated March 24, 1932 from yourself to Mr. Hockenbeamer, and No. 60 being a letter dated March 28, 1932, from Mr. Hockenbeamer to yourself, and will ask you if those are correct copies of the documents they purport to be copies of?

A. Yes; they seem to be a copy of the letter which I sent to Mr. Hockenbeamer and his reply.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 59 and 60.

The Examiner: They will be received in evidence as Commission's Exhibits 59 and 60 respectively.

(The photostatic copies of letters referred to were marked Commission's Exhibits Nos. 59 and 60, and were received in evidence.)

(Testimony of James B. Black.)

By Miss Calkin: [1127]

Q. Do these letters constitute the only communications between North American and the Applicant relative to North American's representation on Applicant's Board for 1932?

A. As far as I know, yes.

Q. You had no other communications with Mr. Hockenbeamer? A. I don't recall any.

Q. I hand you what has been marked for purposes of identification as Commission's Exhibit No. 61, the same purporting to be a photostatic copy of a letter dated January 28, 1933, from Mr. Dame to Mr. Hockenbeamer, and will ask you if you can identify that letter. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 61.

The Examiner: Without objection, it will be received in evidence and marked Commission's Exhibit No. 61.

(The photostatic copy of the letter referred above was marked Commission's Exhibit No. 61 and was received in evidence.)

By Miss Calkin:

Q. Was the request made in this letter complied with, Mr. Black? A. Yes.

Q. I hand you what purports to be a photostatic copy of [1128] a letter dated March 17, 1933, from yourself to Mr. Hockenbeamer, marked as Commission's Exhibit No. 62 for purposes of identification,

(Testimony of James B. Black.)

and I will ask you if that is a true copy of the document that it purports to represent? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 62.

The Examiner: The letter marked Commission's Exhibit No. 62 for identification will be received in evidence as Commission's Exhibit No. 62.

(The photostatic copy of letter referred to above was marked Commission's Exhibit No. 62 and was received in evidence.)

By Miss Calkin:

Q. Was Exhibit No. 62 your only communication with Mr. Hockenbeamer, or any of Applicant's representatives, regarding the subject matter thereof?

A. During that year?

Q. Yes. A. As far as I recall, yes.

Q. I now hand you what has been marked for purposes of identification as Commission's Exhibits Nos. 63 to 66, inclusive; Commission's Exhibit 63 purporting to be copy of a telegram dated January 17, 1934 from yourself to Mr. Hockenbeamer; Commission's Exhibit No. 64 purporting to be a copy [1129] of a letter dated January 17, 1934 from Mr. Foote to Mr. Doolittle; Commission's Exhibit No. 65 purporting to be a copy of a telegram dated January 18, 1934 from Mr. Hockenbeamer to yourself, and Commission's Exhibit No. 66 purporting to be a copy of a telegram dated January 19, 1934

(Testimony of James B. Black.)

from yourself to Mr. Hockenbeamer, and I will ask you if you can identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 63 to 66, inclusive.

The Examiner: The documents will be received in evidence in the order described as Commission's Exhibits Nos. 63 to 66 inclusive.

(The photostatic copies of the documents referred to were marked Commission's Exhibits Nos. 63 to 66 inclusive, and were received in evidence.)

By Miss Calkin:

Q. By Mr. Black, so far as you know, do Exhibits 63 to 66 inclusive constitute all of the communications between the Applicant and the North American regarding the selection of Mr. Doolittle to fill the vacancy caused by Mr. Dame's death?

A. As far as I know, yes.

Q. I now hand you what has been marked for purposes of identification Commision's Exhibit No. 67, which purports to be a copy of a letter dated March 31, 1934 from yourself [1130] to Mr. Hockenbeamer, and what has been marked for purpurposes of identification Commission's Exhibit No. 68, which purports to be a copy of a letter dated April 2, 1935 from yourself to Mr. Hockenbeamer, what has been marked for purposes of identification as Commission's Exhibit No. 69, which purports to be a copy of a letter from Mr. Hockenbeamer to

(Testimony of James B. Black.)

yourself dated April 6, 1935, and will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 67 to 69 inclusive.

The Examiner: They will be received in evidence as Commission's Exhibits Nos. 67 to 69 inclusive.

(The photostatic copies of documents referred to above were marked Commission's Exhibits Nos. 67 to 69 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, do Commission's Exhibits Nos. 67 to 69 inclusive, constitute all of the communications between the Applicant and the North American Company prior to the 1935 annual stockholders' meeting? A. As far as I recall, yes.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 70, which purports to be a copy of a letter from Mr. Hockenbeamer to Mr. Fogarty [1131] dated July 10, 1935, and what has been marked for purposes of identification as Commission's Exhibit No. 71, which purports to be a copy of a letter from yourself to Mr. Hockenbeamer dated April 2, 1935, and I will ask you if you can identify these documents?

A. Yes. I don't know that I ever saw the original of this letter to Mr. Fogarty, but I assume it is in the files.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 70 and 71.

The Examiner: If there is no objection these two documents will be received in evidence as Commission's Exhibits Nos. 70 and 71 respectively.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits Nos. 70 and 71 respectively, and were received in evidence.)

By Miss Calkin:

Q. In the examination of the files of the North American Company, Mr. Black, I failed to find any letters since you have been president of the Applicant similar to the exhibits which have been introduced relating to advice from the North American Company as to who it wanted as representatives on the Applicant's Board. Is that explained by your previous testimony to the effect that you have not been advised during your presidency as to who they wanted, but you assumed [1132] that the same men would continue in office?

A. That is with respect to Mr. Doolittle, yes. Except with respect to him I was certainly advised —that is not an accurate statement.

With respect to Mr. Freeman's election to succeed Mr. Doolittle I was certainly advised because I would not have known what to have recommended otherwise; but other than that there have been no successions.

(Testimony of James B. Black.)

Q. Then there has been no correspondence since you have been president similar to the correspondence between the North American people and Mr. Hockenbeamer regarding a selection of the persons?

A. I don't recall any—there may have been. I don't recall how I was advised about Mr. Doolittle, whether it was by telephone or by letter. There may have been a letter.

Mr. Phleger: It is a fact, isn't it, that the proxy statement which is the invitation to send in a proxy in the last two years has contained the names of the North American representatives?

The Witness: Yes.

Mr. Phleger: And when they have sent it back, they have sent back instructions for the selection of their own representatives?

The Witness: Yes.

Mr. Phleger: Isn't that true? [1133]

The Witness: That is so; yes.

By Miss Calkin:

Q. The evidence, I believe, shows that neither Mr. Fogarty or Mr. Freeman have ever attended a meeting of the Applicant's Board of Directors. Have either of these men ever said anything to you concerning their absence from the Directors' meetings?

A. No, I don't recall any specific reference to it.

(Testimony of James B. Black.)

Q. Do you know why these directors do not deem it necessary to attend Board meetings in order to look after North American's investment in the Applicant?

A. I presume they feel they are getting sufficient information from reports that we send them and advice that I give them from time to time on the important affairs of the company to know what is going on. I don't know what is in their minds. I have never discussed the subject with them.

Q. The attendance of the North American representatives has been less frequent since Mr. Earl's death than it was prior to that time, has it not, Mr. Black?

A. Not the attendance of the representatives, the New York representatives, I don't think there has been much change in that; but, of course, after Mr. Earl's death there was no local nominee of the North American on the Board. There has been none.

Q. But it is a correct statement to say that the [1134] attendance of the North American representatives at Applicant's Board meetings has been less frequent since Mr. Earl's death than it was prior thereto?

A. That is technically correct, yes.

Q. Have you ever conferred with Mr. Fogarty or Mr. Freeman regarding matters pertaining to the Applicant before the submission of such matters to the Applicant's' Board? A. Never.

(Testimony of James B. Black.)

Q. Can you compare the difference between the matters which you submit to the Executive Committee and which you submit to the Board?

A. Well, the Executive Committee considers a great deal more detail than the Board and meets more frequently and, of course, we get over a great deal more ground. There are certain functions that we ask the Board to assume, such as declaration of dividends, and the increase of debt, and the replacement of lost certificates, and applications to regulatory bodies, and important matters of that kind. But with those exceptions, the important matters that are brought before the Board and Executive Committee are quite similar. The Executive Committee passes on a great many other matters, such as salary changes of $300 and over, contracts, important contracts, right of way agreements, disposal of property; and we report in perhaps more detail on operating matters to the Executive Committee than we do to the Board. [1135]

Q. Do any of the officers of the company, other than yourself, submit matters originally to the Executive Committee?

A. Oh, yes; Mr. Downing, Mr. Coghlan and Mr. Wishon all make reports and submit matters originally before the Executive Committee and before the Board.

Q. To what extent did Mr. Earl keep you, or other representatives of North American, advised as to the activities of the Executive Committee?

(Testimony of James B. Black.)

A. Mr. Earl sent on the reports generally, which are now being sent on, to New York and in addition he would advise us of any important matters that were being considered or had been considered by the Board at the meeting. That is about all.

Q. You have heard the testimony of several directors to the effect that it was customary for Mr. Earl to take rather voluminous notes at the meetings of the Executive Committee and the Board? A. Yes.

Q. After such meetings did you or, to your knowledge, any representative of the North American Company receive from Mr. Earl a synopsis of what had occurred at the meetings?

A. He would write a letter of transmittal directed to the president of the North American Company in which he would outline important matters that had been discussed at the meeting and had been decided. In that way he gave the [1136] North American Company officers, their nominees on the Board of Pacific Gas and Electric Company, a week's earlier advice than they would have received had they waited for the minutes for the following meeting to come along.

Q. Those minutes were not sent to the North American Company during Mr. Earl's lifetime?

A. Yes. I think he enclosed copies of the minutes, of course, he would enclose a copy of the minutes of the previous meeting, and he would anticipate by one week——

Q. (interposing) In other words, he wrote this

(Testimony of James B. Black.)

letter prior to the time he was furnished with a copy of the minutes of the Executive Committee?

A. Yes. He would jot down the important matters. I don't know as he would cover everything that would be covered in the minutes, and he might have covered some things not covered in the minutes.

Q. Who, if anyone, performs the same functions with respect to keeping North American advised as Mr. Earl did during his lifetime?

A. No one performs those functions.

Q. So that now North American receives only the copies of the minutes of the Executive Committee and of the Board?

A. Yes; and in addition the reports, of course, which have been referred to.

Q. But as to the activities of the Board and the [1137] Executive Committee meetings they receive only the minutes? A. That is correct; yes.

Q. Has anyone associated with the North American Company ever advised you in substance that as long as you were president of the Applicant the North American Company did not deem its representation on the Executive Committee necessary?

A. No.

Q. What discussions, if any, have you had with any North American representatives as to the non-desirability or non-necessity of representation by the North American on Applicant's Executive Committee?

(Testimony of James B. Black.)

A. I haven't had any that I recall. I am quite sure I haven't had any.

Q. Were any of the officers, present officers of the Applicant, other than yourself and Mr. Wishon, ever associated with the North American Company, the Western Power Corporation, or any of the subsidiaries of either of those companies?

A. No.

Q. Your direct testimony may have covered this, but what was your position with the Western Power Corporation, or any of its subsidiaries, at the time North American acquired its interest in the Western Power Corporation?

A. I was Vice-President and General Manager of the Great Western Power Company of California, and a director, I [1138] believe, of the San Joaquin and Midland Companies, and was a director and Vice-President of the subsidiaries of the Great Western Power Company of California.

Q. But you were neither an officer or director of the Western Power Corporation?

A. I was not.

Q. Who suggested your transfer from the Great Western Power Company of California to the North American Company in 1927?

A. The first I heard of it was through Mr. H. P. Wilson, who had been president of the Western Power Corporation, and later Mr. Dame spoke to me about it.

(Testimony of James B. Black.)

Q. Was Mr. Wilson at that time a stockholder of the North American Company? A. Yes.

Q. What portion of your time did you devote to matters pertaining to the business of the Western Power Corporation, or its subsidiaries, from the period 1927 to 1930?

A. A very substantial portion. I don't recall any allocation ever being made, but it was my primary duty to assist the Western Power subsidiaries in their operations.

Q. What change took place in your duties after 1930?

A. There was no great change. As long as I was a member of the Board representing the North American Company on the Pacific Gas Board I was the principal point of contact [1139] with the affairs of Pacific Gas and Electric Company and, in addition, I had other special assignments from time to time on North American Company affairs other than their interests in the Pacific Gas and Electric Company.

Q. Did you spend approximately as much of your time as an employee of the North American Company on business pertaining to the Applicant as you did on business pertaining to the subsidiaries of the Western Power Corporation from the period 1927 to 1930? A. Very much less.

Q. And you had no contacts with the Western Power Corporation after your resignation from its Board in the fall of 1935?

(Testimony of James B. Black.)

A. None whatsoever except the routine contacts with the stockholders.

Q. I believe in your direct testimony you testified that Mr. Fogarty first acquainted you with the desire of some members of Applicant's Board that you become president of the Applicant?

A. That is right.

Q. Had you discussed a possible successor to Mr. Hockenbeamer with anyone prior to Mr. Hockenbeamer's death? A. Never.

Q. Had you ever in any manner prior to Mr. Hockenbeamer's death indicated to anyone connected with North American or [1140] the Applicant that upon Mr. Hockenbeamer's retirement or death you would be a candidate for his position?

A. I have no such recollection of any conversation.

Q. Did you talk to Mr. Williams concerning your acceptance of the offer of the Board of the Applicant to take the presidency of that company?

A. I did not.

Q. Did you at any time prior to the time you left New York for California, in November of 1935, have any discussions with Mr. Williams regarding your presidency of the Applicant?

A. No. I went in to say goodbye to him a day or so before I left. That was the only contact I had with him, as I recall, in that period.

Q. With what representatives of the North American Company organization did you confer

(Testimony of James B. Black.)

regarding your acceptance of the offer by the Applicant's Board?

A. Mr. Fogarty is the only one that I recall having any discussion with about it. I might have said something to Mr. Doolittle, but I don't recall it. He was on the Board at the time.

Q. How many telephone conversations did you have with Mr. Miller regarding the presidency of the company prior to your coming here?

A. Just the two. I think they both occurred the same [1141] day.

Q. When was the question of the salary which you would receive from the Applicant discussed?

A. In San Francisco after I came out here.

Q. There was no mention made of salary during the telephone conversations with Mr. Miller?

A. Mr. Miller said we would discuss that when I got to San Francisco, which was entirely agreeable to me.

Q. Was your initial salary as president of the Applicant an increase over your salary with the North American? A. It was; yes.

Q. Did you feel fairly certain that there would be such an increase when you agreed to accept the position? A. Yes.

Q. Did you talk to any of the local directors, other than Mr. Miller, prior to your acceptance of the offer made by Mr. Miller? A. I did not.

Q. Was there any written communication between you and/or the North American and any of

(Testimony of James B. Black.)

the local directors regarding the offer and acceptance of the presidency of the Applicant?

A. Not to my knowledge.

Q. Have you now testified, Mr. Black, to everything that you know concerning your selection as the president of [1142] the Applicant?

A. I have; yes.

Q. What, if anything, was said by you, Mr. Williams, Mr. Fogarty, or Mr. Freeman, prior to your leaving New York City to accept the presidency of the Applicant, regarding your future contacts with North American on Applicant's problems?

A. I don't recall any conversations.

Q. Did you make any representation to them that you would advise North American representatives concerning Applicant's problems to a greater or lesser extent than Mr. Hockenbeamer had done?

A. No.

Q. Was there any understanding between you and any representatives of the North American Company which imposed any obligation upon you with respect to advising North American on Applicant's matters, or conferring with its representaties on its policies? A. None whatsoever.

Q. Did you at that time formulate in your own mind what your attitude toward North American as president of the Applicant, would be?

A. No. I don't think it ever occurred to me.

Q. Did you have any discussions with any representatives of the North American Company as to

(Testimony of James B. Black.)

what your attitude toward [1143] the North American would be?

A. No. The relations between the two companies, may I amplify, were such a routine nature that naturally the subject would not come up.

Q. Have you at any time, in any manner indicated to North American representatives that during your presidency of the Applicant you would also act as its representative on Applicant's Board?

A. Never.

Q. Has the fact that North American is the largest stockholder of the Applicant ever influenced your decision or recommendation on Applicant's problems and, if so, to what extent?

A. None whatsoever; and it has never influenced me in any way.

Q. To what extent has your former association with the North American Company and its subsidiaries influenced your conduct as president of the Applicant? A. None at all.

Q. Do you feel that as president of the Applicant you have made no decisions which would have been different if you had never been associated with North American or its subsidiaries?

A. I have never considered the North American in any decision that I have made since I have been president of the [1144] Applicant.

Q. Have you ever refused to follow any recommendations, if any were made, by the North American on Applicant's problems?

(Testimony of James B. Black.)

A. None have ever been made.

Q. In your opinion does not your prior association with the North American Company tend to influence your opinion in the event there is any divergence of views between certain members of the Applicant's Board and yourself on problems pertaining to the Applicant?

A. They do not.

Q. How often do you have telephonic communications with the representatives of the North American Company?

A. As often as there is any important matters decided which I think they might have an interest in, and that their directors ought to know about in order to intelligently answer any inquiries that might be made. As to the number, that would vary with the number of important matters. I don't suppose as an average it would be more than five, six, eight times a year.

Q. Mr. Black, the staff of the Commission has checked the records of the Telephone Company, the Applicant, and the North American Company, and have obtained the following information: That in 1937 there were two calls from Applicant's number in San Francisco to the North American [1145] Company; in 1938 there were six calls, and in 1939 there were three calls; and that for said years the calls from the North American Company to the Applicant were two, three, and two for the respec-

(Testimony of James B. Black.)

tive years. Would you say that that information was substantially correct?

A. That checks pretty closely with my answer, I think.

Q. Do any representatives of the Applicant go to New York to confer with North American representatives on any problems pertaining to the Applicant?

A. No; no representatives of the Pacific Gas and Electric Company go East to confer with North American representatives.

Mr. Phleger: Will you read the question?

(The question referred to was read by the reporter as above recorded.)

By Miss Calkin:

Q. Mr. Black, there have been on the stand certain employees and officers of the company who have testified as to the extent of their communication with the representatives of the North American Company. To your knowledge are there any other employees of the Applicant who have not been on the stand who have had any communications with the North American Company or have conferred with them in any manner?

A. Not to my knowledge. [1146]

Q. Would any communications which might be made by representatives of the Applicant to the North American Company in a written form, in the normal course of procedure, go over your desk?

(Testimony of James B. Black.)

A. They would unless they were of a routine nature. Mr. Foote's communications, for instance, might not go over my desk, and Mr. Beckett's would not. I would pay no attention to those communications.

Q. But if North American made an inquiry, for example, of Mr. Vincent regarding matters pertaining to his duties would Mr. Vincent's reply reach your desk before it was sent to the North American Company?

A. I would certainly expect it to; yes.

Q. Do any stockholders of the Applicant, other than the North American Company, receive reports similar to those sent to the North American Company?

A. They are not sent to the North American Company stockholders; they are sent to the directors who are officers of the North American Company. The North American Company, as a stockholder, would be treated exactly the same as any other stockholder.

Q. If other stockholders of the Applicant requested specifically the information which you now furnish the directors of the North American Company, would their request be complied with? [1147]

A. I doubt it in its entirety. We would supply them with all the information that they needed as stockholders, but I don't believe we would feel it was necessary to supply them all the information in detail that we supply our directors. We most cer-

(Testimony of James B. Black.)

tainly want to keep our stockholders informed, and we make every effort to do so, but there is a limit to the amount of detail, I think as a matter of precedent, that we should start furnishing to stockholders.

Q. During the time you were an employee of the North American Company, Mr. Black, and received the reports from the Applicant, what use did you make of such reports?

A. Well, I used them to keep in touch with the Pacific Gas and Electric Company's affairs, and I would ask the staff of the North American Company occasionally to make a special analysis of certain phases of certain parts of the reports and they were distributed after that to the different staff departments of the North American Company.

Q. To what extent did you make suggestions to Mr. Hockenbeamer, or any other representatives of the Applicant, concerning problems which presented themselves on your examination of such reports?

A. I don't recall having made any suggestions to him. I would make inquiries from time to time about certain matters which were not clear to me.

Q. Do you frequently or at any time receive comments [1148] from the North American Company on reports which have been furnished during your presidency and, if so, what is generally the nature of such comments?

A. I only recall one comment that had been made by either Mr. Fogarty or Mr. Freeman in re-

(Testimony of James B. Black.)

cent years. That was comment from Mr. Freeman on our cash position. He asked if it wasn't getting too low and I told him I didn't think it was.

Mr. Beckett receives comments and requests for additional information from time to time from Mr. Freeman. Some of those Mr. Beckett shows me and others he answers and I don't see them at all.

Q. Did Mr. Freeman, on the occasion you mention, suggest that your cash position be increased?

A. No. He asked, as I recall, if it wasn't getting pretty low for a company our size, and I told him I didn't think so. I think that was brought about by his lack of knowledge of our cash problems. We have a low point in our cash position around the end of November and the first of December, and from then on until June we build up cash. We lose a little in June and then we build up until the following year. I think he picked up some statement which had been presented to the Executive Committee, or the Board, or both, setting forth our cash position, and it was brought to his attention during that low period. [1149]

Q. As to the explanation which you furnished Mr. Freeman did you receive any other communication from him in regard to the matter?

A. No. I don't know as I explained that to him. I guess—I shouldn't guess. I don't remember just what I did tell him, except that I didn't think that the cash position was unduly low.

(Testimony of James B. Black.)

Q. In what respects, if any, do the reports now furnished by the Applicant to the North American directors differ from the reports furnished during Mr. Hockenbeamer's presidency?

A. They are substantially the same. I would say in substance they are almost exactly the same. They may be changed in form from time to time.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 72, which purports to be a copy of a letter from Mr. Hockenbeamer to yourself dated September 22, 1930, and what has been marked for purposes of identification Commission's Exhibit No. 73, which purports to be a copy of a letter dated September 30, 1930, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 74, which purports to be a copy of a letter dated October 31, 1930 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as [1150] Commission's Exhibit No. 75, which purports to be a copy of a letter dated November 5, 1930 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 76, which purports to be a copy of a letter dated February 6, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 77, which purports to be a copy of a letter dated February 16, 1931 from Mr. Hock-

(Testimony of James B. Black.)

enbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 78, which purports to be a copy of a letter dated February 18, 1931 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 79, which purports to be a copy of a letter dated February 21, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's No. 80, which purports to be a copy of a letter from Mr. Hockenbeamer to yourself dated May 21, 1931, and what has been marked for purposes of identification as Commission's Exhibit No. 81, which purports to be a copy of a letter dated May 17, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 82, which purports to be a copy of a letter dated June 16, 1931 from Mr. Hockenbeamer to yourself, [1151] and what has been marked for purposes of identification as Commission's Exhibit No. 83, which purports to be a copy of a letter dated June 18, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 84, which purports to be a copy of a letter dated November 11, 1931 from yourself to Mr. Beckett, and I will ask you if you can identify Commission's Exhibits Nos. 72 to 84 inclusive?

A. Yes.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 72 to 84 inclusive.

The Examiner: In the absence of objection, these documents will be received in evidence and marked Commission's Exhibits Nos. 72 to 84 inclusive as indicated.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits Nos. 72 to 84 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, was the request made in Commission's Exhibit No. 84 complied with?

A. I presume it was.

Q. I now hand you, Mr. Black, what has been marked for purposes of identification Commission's Exhibit No. 85 which purports to be a copy of the letter dated February 5, 1932 to yourself, and will ask you if you can identify that? [1152]

A. Yes.

Q. Who is the "J." whose initial appears on that letter?

A. I think it is Mr. Hockenbeamer's secretary. Her maiden name began with a "J". She is married now. I think it quite likely, as that is just a routine letter of transmittal, it is quite possible that Mr. Hockenbeamer said, "Send this to Mr. Black" and she wrote the letter and perhaps signed it.

Q. I now hand you what has been marked for

(Testimony of James B. Black.)

purposes of identification Commission's Exhibit No. 86, which purports to be a copy of a letter dated February 15, 1932 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 87, which purports to be a copy of a letter dated March 21, 1932 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification as Commission's Exhibit No. 88, which purports to be a copy of a letter dated May 27, 1932, from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 89, which purports to be a copy of a letter dated May 31, 1932, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification as Commission's Exhibit No. 90, which purports to be a copy of a letter dated August 16, 1934 from Mr. Hockenbeamer [1153] to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 91, which purports to be a copy of a letter dated November 12, 1934, from "E.J.B." to yourself—E. J. B., I believe are the initials of Mr. Beckett? A. That is correct; yes.

Q. (continuing) —and what has been marked for purposes of identification Commission's Exhibit No. 92, which purports to be a copy of a letter dated November 16, 1934 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No.

(Testimony of James B. Black.)

93, which purports to be a copy of a letter dated November 19, 1934 with the initial "J." addressed to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 94, which purports to be a copy of a letter dated November 20, 1934, from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No. 95, which purports to be a copy of a letter dated December 4, 1934 from Mr. Hockenbeamer to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 96, which purports to be a copy of a letter dated December 10, 1934, from yourself to Mr. Hockenbeamer, and I will ask if you can identify Commission's Exhibits Nos. 84 to 96 inclusive?

[1154]

A. Yes.

Miss Calkin: I offer in evidence Commission's Exhibits Nos. 84 to 96 inclusive.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 84 to 96 inclusive as indicated.

(The photostatic copies of the documents referred to above were marked Commission's Exhibits 84 to 96 inclusive, and were received in evidence.)

By Miss Calkin:

Q. Referring to Commission's Exhibit No. 96, which is a letter dated December 10, 1934 from

(Testimony of James B. Black.)

yourself to Mr. Hockenbeamer, can you tell me what was the extent of the contacts between Mr. Hockenbeamer and Mr. Fogarty as of the date of this letter?

A. As far as I know they would be only by letter.

Q. I am referring specifically to the last paragraph of this letter?

A. I don't know specifically what that refers to. I don't know what that would refer to except perhaps Mr. Hockenbeamer was interested in the legislation at Washington which was being considered, I think, about that time, and was finally enacted in 1935.

Q. Was Mr. Fogarty quite active during that period in connection with the Public Utility Holding Act? [1155]

A. He was in touch with it. I wouldn't say he was active. I know he was in Washington and testified, I think, at some of the hearings before the Senate and House Committees.

Q. You are referring to the then proposed bill which later became the Public Utility Holding Company Act?

A. Yes. I think that is the only thing I can think of that might have been going on at that time which Mr. Hockenbeamer might have been interested in, and which Mr. Fogarty might have had more information on than I had.

(Testimony of James B. Black.)

Q. It would appear from the correspondence introduced, and from the correspondence files examined, that Mr. Hockenbeamer commented upon reports sent by the Applicant to the North American Company to a greater extent than you have done. Do you think that is a fair conclusion?

A. Oh, yes; quite so. He is a much more faithful correspondent than I am.

Q. So you would say that the North American Company received more comments upon the business of the Applicant during Mr. Hockenbeamer's lifetime than it has received since then? A. Yes.

Miss Calkin: I wonder if we could have a recess at this time?

The Examiner: Yes. We will take the morning recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:) [1156]

By Miss Calkin:

Q. Mr. Black, I believe there has been introduced in evidence typical copies of all reports regularly sent by the Applicant to the North American Company. Will you please state generally the nature of all reports of an informal character made irregularly by the Applicant to the North American Company, if any?

A. I don't recall any reports which are made irregularly to the North American Company, but we sent them copies of court decisions or Railroad

(Testimony of James B. Black.)

Commission decisions, sometimes briefs which might be filed on important litigation. I recall particularly sending on a brief which was filed in connection with this gas rate litigation, which involved about $6,000,000 to the company. And we will send them on clippings from editorials or newspaper accounts of events that they might have an interest in. That is the easiest and simplest way to keep them informed rather than to try to write letters about these various things.

Mr. Gerdes: Will you please read that question, Mr. Reporter?

(The question referred to was read by the reporter as above recorded.)

A. (continuing) Those reports—I assume when you mention the "North American Company" that you refer to the directors of Pacific Gas and Electric Company who are officers [1157] of the North American Company.

The Examiner: Or directly, I presume. She said "if any" in the question. I suppose it might include either the members of the North American Company who are directors of the company or anyone else, if you do send any reports to anyone other than those directors.

The Witness: Well, we don't send any reports to the North American Company. They are sent to the directors.

(Testimony of James B. Black.)

By Miss Calkin:

Q. Are all your communications with the North American Company with Mr. Fogarty or Mr. Freeman, who are directors?

A. Well, they might be. They might designate other people to make inquiries or to indicate, perhaps, that reports be sent to other members of the North American Company organization, but I have always taken that to mean that the directors themselves didn't care to be bothered by having the reports sent directly to them and they would designate someone who was familiar with the substance of the report to receive it.

Q. These other matters which you have just testified were furnished the North American Company people were sent voluntarily or were they requested by the North American Company?

A. You refer to decisions?

Q. Yes. A. Those are sent voluntarily.

[1158]

Q. Who determines whether or not they should be sent? A. Well, I do.

Q. Would you say that the North American Company had been kept better advised on Applicant's affairs since you became president than it was prior thereto?

A. No, I think less.

Q. And what is the reason for such?

A. Well, I think it is the natural thing that once a situation is established or a relationship is

(Testimony of James B. Black.)

established and a routine set up for the supply of information that this extra or special information, both the number of requests and the amount volunteered, becomes less and less as time goes along. I think that is generally what has happened. Of course, I have been extremely busy since I have been here; and, furthermore, when I was in New York I felt a personal responsibility because I had a good deal to do with getting the North American Company into a very large investment out here and it was my desire to keep up to date on what was going on here in the greatest of detail in order that I might intelligibly talk to the other officers of the North American Company about affairs here.

Q. Would you say that there is now no one in the North American Company organization which follows the affairs of the Applicant as closely as you did while you were in the employ of the North American Company? [1159]

A. I think that is correct.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 97, which purports to be a copy of a letter dated October 1, 1930 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 98, which purports to be a copy of a letter dated October 4, 1930 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 99, which pur-

(Testimony of James B. Black.)

ports to be a copy of a letter dated October 16, 1930 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification as Commission's Exhibit No. 100, which purports to be a copy of a letter dated November 12, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification as Commission's Exhibit No. 101, which purports to be a copy of a letter dated November 16, 1931 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification Commission's Exhibit No. 102, which purports to be a copy of a letter dated November 20, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 103, which purports to be a copy of a letter dated December 2, 1931 from yourself to Mr. Hockenbeamer; and what has been marked for purposes of identification Commission's Exhibit No. 104, which purports to be a copy of a letter dated January [1160] 22, 1931 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No.105, which purports to be a copy of a telegram dated January 28, 1931 from Mr. Hockenbeamer to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 106, which purports to be a copy of a letter dated August 12, 1935 from yourself to Mr. Foote; and what has been marked for purposes of identification Commission's Exhibit

(Testimony of James B. Black.)

No. 107, which purports to be a copy of a telegram dated July 7, 1938 from yourself to Mr. Fogarty; and will ask you if you can identify those documents. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 97 to 107, inclusive.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 97 to 107, inclusive, there being no objection.

(The documents above referred to were marked Commission's Exhibits Nos. 97 to 107, inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, will you refer to Commission's Exhibit No. 71? What was the "gas rate matter" referred to in the last paragraph of this letter?

A. That evidently refers to the Master's report on the litigation between the Pacific Gas and Electric Company and [1161] the Railroad Commission with respect to gas rates, and the Master's report of the District Court was favorable to the company.

Q. Did you receive a copy of the Master's report referred to in the paragraph and, if so, what did you do upon the receipt of this report as regards advising the Applicant as to future action on its part concerning the rate case?

A. I received the report and filed it, and I didn't attempt to advise anyone out here as to what they should do.

(Testimony of James B. Black.)

Q. Did you have any further correspondence with Mr. Hockenbeamer regarding the gas rate matter?

A. That was litigated over a period of several years. I don't know whether I did or not. If I did, it had nothing to do with the direction of their policy.

Q. At that time were you of the opinion that a contest of that matter was advisable?

A. I don't believe I had any opinion on it. I didn't know enough about it to have one. The matter was decided out here and I didn't feel very strongly one way or the other about it.

Q. You weren't as active in determining the policy of the company in connection with that matter as some of the local directors that have testified concerning it?

A. I was not active at all.

Q. That is the same gas rate case that has been referred [1162] to in testimony of other persons?

A. I presume so, because there has only been one in 27 or 28 years by regulation of the Commission.

Q. I hand you what has been marked for purposes of identification as Commission's Exhibit No. 108, which purports to be a copy of a letter dated June 27, 1935 from yourself to Mr. Hockenbeamer. Can you identify that document? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit 108.

(Testimony of James B. Black.)

The Examiner: It will be received in evidence and marked Commission's Exhibit 108.

(The copy of letter referred to was marked Commission's Exhibit No. 108 and received in evidence.)

By Miss Calkin:

Q. Referring to Commission's Exhibit 108, Mr. Black, were the documents referred to in the first paragraph of this letter sent to you by Mr. Earl during his lifetime?

A. No. They were sent to the president of the North American Company by Mr. Earl.

Q. Was the request made by you in this letter to Mr. Hockenbeamer complied with? A. Yes.

Q. Did Mr. Hockenbeamer keep you advised on "important developments in California" in compliance with the request [1163] made by you in the second paragraph of this letter?

A. Yes. I don't know that I did with all of them.

Q. Could you describe generally the nature of the matters Mr. Hockenbeamer kept you advised on from the date of this letter to his death?

A. Well, I can't tell you the exact matters, but generally they would follow the same pattern that had been followed in previous years. If we had important litigation, such as this gas rate litigation, he would no doubt advise from time to time on his progress; rate matters with the Railroad

(Testimony of James B. Black.)

Commission; other rate matters; he would comment on earnings from time to time and on the prospect for development of large new pieces of business for the company here in California. I think that's about all.

Q. Did you talk to Mr. Earl frequently on the telephone from 1930 until the time of his death?

A. No.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 109, which purports to be a copy of a letter dated August 5, 1935 from yourself to Mr. Hockenbeamer, and will ask you if you can identify that document. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibit No. 109. [1164]

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 109.

(The copy of letter referred to was marked Commission's Exhibit No. 109 and received in evidence.)

By Miss Calkin:

Q. Mr. Black, did the Applicant at any time during 1935 have a representative in Washington in connection with the then contemplated Public Utility Holding Company Act of 1935?

A. Not to my knowledge.

Q. Was the North American Company purporting to represent the interests of the Applicant in connection with the proposed Act during this period?

(Testimony of James B. Black.)

A. It was not.

Q. Mr. Black, as you know, representatives of the Commission have examined the files presumably containing all the correspondence between the Applicant and any of its representatives in the North American Company and any of its representatives from 1930 to the date of said examinations, and I believe it is a fair statement that those files do not contain letters between yourself and the North American Company representatives which are as numerous or of the same nature as those which were exchanged between yourself and Mr. Hockenbeamer when the latter was president of the Applicant. Do you have any explanation to make as to why this situation appears to be true, if you agree that it is true? [1165]

A. Well, they weren't written.

Q. And why do you not feel it incumbent upon you to keep the North American Company as closely advised as Mr. Hockenbeamer did?

A. I think I do keep them as closely advised on important matters. Mr. Hockenbeamer used to write me a great many details which I don't believe are necessary for the adequate information of the North American Company representatives as to our affairs. Now I try to keep them advised on every important matter that has anything to do with the fortunes of our business out here, and I do it by telephone calls and I do it by letters occasionally and by the sending of reports regularly, and if there is

(Testimony of James B. Black.)

something unusual coming along which might be covered by a brief or a decision or a newspaper story I send that on. But I don't take the trouble to write a good deal of the detail and attempt to analyze a good deal of the detail which is sent to them.

Q. Is that partially because there is no one in the North American Company office at the present time that is as familiar with the western properties as you were during the time you were there?

A. Well, I don't know that. I think that they feel that they are getting all of the information they need to keep adequately informed, or I would hear from them just as I would hear from any other director if he didn't feel that he [1166] was getting the information that would be necessary for him to discharge his obligation as a director.

Q. Well, the advice which you give North American Company, do you at the same time request their suggestions or recommendations in respect to the information furnished them? A. I do not.

Q. Do you furnish it for the purpose of receiving from them any recommendations, if they might wish to make such?

A. I furnish it for the purpose of keeping them advised, and if they at any time ever cared to make any recommendations or suggestions I would be very glad to have them. But I don't solicit them.

Q. What generally is the nature of the communications that you have had from representatives of

(Testimony of James B. Black.)

the North American Company regarding information contained in the reports which have been regularly or irregularly furnished to them?

A. I have had very little. Those communications have settled in Mr. Beckett's hands and he has had inquiries from time to time from Mr. Freeman. I don't think they are very frequent. I don't see them. Ordinarily they ask questions about matters that have to do with the details of the reports which are sent out.

Q. Could you describe generally the nature of the comments made by the North American Company people on the reports sent by the Applicant to them? [1167]

A. Well, they have made no comments that I recall to me. It is just purely a routine transaction, a routine matter as far as I am concerned.

Q. Would you say that they never make recommendations relating to a change in policy by the Applicant when they receive these reports?

A. They never have since I have been president of the company.

Q. Have you furnished North American Company advice on all matters which it has requested advice on? A. Yes.

Q. In the event North American Company should make recommendations regarding some major problem concerning the Applicant what consideration would you give such recommendation?

(Testimony of James B. Black.)

A. I would give them very thorough consideration and I would have to weigh it, of course, on my judgment as to their knowledge of the situation that they were recommending on. If it is a matter that involved the recommendation on a subject which I felt that they were well informed on, I would, of course, give it more consideration than if it referred to some matter which was purely local in character and which they couldn't possibly have a background which would give any great weight to the recommendation.

Q. If the North American people should strongly urge that the Applicant follow a certain course of procedure and [1168] you did not agree with the plan outlined by them, would you submit your views together with those of North American Company to your Board?

A. I would not. I don't believe that it is my function to try to segregate the different views of different groups of directors, if there are. If any director has a view on a matter he is entitled to come to the meeting and present it.

Q. In other words, you would feel that the North American Company viewpoint should be presented by their directors?

A. Exactly, and it would not come up otherwise. By "North American", again I want to make it clear that I look to those men as directors and not to the company in our relations with them.

Q. Mr. Black, do you feel free in your present

(Testimony of James B. Black.)

position to treat any suggestion or recommendation made by North American Company or its directors on your Board in exactly the same manner as you would treat a similar recommendation or suggestion if it were made by any other stockholder?

A. Exactly, giving due weight, of course, to my judgment as to their knowledge of the particular situation that they might be recommending on.

Q. Does the fact that you were formerly associated with the North American Company not tend to influence your determination as to whether or not such recommendations, if made, should be put into effect? [1169] A. None whatsoever.

Q. You do not believe that the fact that the North American Company recommended a particular course would influence you in arriving at your decision as to what your recommendation on the matter to the Board would be?

A. If their recommendation was correct it would, but it wouldn't otherwise. I would treat their recommendations solely on the basis of their value as I determined them, and if they appeared and stated their position in a meeting of the Board I am sure that the other directors would accept their recommendation or reject it purely on its merits.

Q. Would you say that at no time since you have been president of the Applicant has the North American Company or its representatives on your Board recommended a certain course of procedure

(Testimony of James B. Black.)

for the Applicant to follow? A. They have not.

Q. Do you feel that in view of your past association with the North American Company that you could decide a matter which involved a conflict of interest between the Applicant and the North American Company with as much impartiality as if you had not had that association?

A. I feel very strongly that I could.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 110, which purports to be a copy of a letter dated July 6, 1937 from [1170] Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 111, which purports to be a copy of a letter dated July 14, 1937 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibt No. 112, which purports to be a copy of a letter dated July 21, 1937 from Mr. Freeman to yourself; and will ask you if you can identify those documents? A. I can, yes.

Q. Do these letters—that is, Commission's Exhibits Nos. 110 to 112, inclusive—represent all the correspondence had between you and Mr. Freeman regarding the inquiries made by him in the letter dated July 6, 1937, which is Commission's Exhibit 110? A. Yes, so far as I recall.

Q. If any other stockholder had made a similar inquiry would you have answered him in substantially the same manner? A. Yes.

(Testimony of James B. Black.)

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 113, which purports to be a copy of a letter dated December 13, 1937, from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 114, which purports to be a copy of a letter dated December 21, 1937 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 115, [1171] which purports to be a copy of a letter dated December 27, 1937 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 116, which purports to be a copy of a telegram dated May 13, 1936 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 117, which purports to be a copy of a telegram dated May 13, 1938 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 118, which purports to be a copy of a letter dated February 15, 1939 from Mr. Freeman to yourself; and what has been marked for purposes of identification Commission's Exhibit No. 119, which purports to be a copy of a letter dated February 20, 1939 from yourself to Mr. Freeman; and what has been marked for purposes of identification Commission's Exhibit No. 120, which purports to be a copy of a letter dated August 14, 1939 from Mr. Fogarty to your-

(Testimony of James B. Black.)

self; and I will ask you if you can identify those documents. A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 113 to 120, inclusive.

The Examiner: I am not sure that the record shows that 110, 111 and 112 are in evidence, but so that the record will be clear I will have the record show that those have been received in evidence and marked Commission's Exhibits 110, [1172] 111 and 112, respectively.

(The copies of letters referred to were marked Commission's Exhibits Nos. 110, 111 and 112 respectively and were received in evidence.)

The Examiner: In connection with the offer of 113 to 120, inclusive, in the absence of objection they likewise will be received in evidence and marked Commission's Exhibits 113 to 120, as indicated.

(The copies of letters referred to were marked Commission's Exhibits Nos. 113 to 120, inclusive, and were received in evidence.)

By Miss Calkin:

Q. Mr. Black, would you say that the correspondence just introduced as Commission's Exhibits 113 to 120, inclusive, is typical of the kind of correspondence which has been exchanged between yourself and Mr. Freeman since the date of your presidency?

(Testimony of James B. Black.)

A. I think it's about all the correspondence that has been exchanged. I don't recall anything else. In fact, I——

Q. (interposing) What in general has been the subject matter of the discussions had between you and Mr. Freeman on the occasions of your visits to New York since you have been president of the Applicant?

A. I have been in New York twice: once this year, once in '38. I don't recall any discussions with him in '38. This year I perhaps spent a half an hour in his office. We talked [1173] just generally about the company's affairs. I don't recall the detail of it.

Q. Is Mr. Freeman generally known as an operating or financial man in the utility field?

A. No. Mr. Freeman is an accountant; that is, accountant's training. He is known as a financial man also.

Q. When you conversed with Mr. Freeman during the summer of this year did he make any recommendations in connection with problems relating to the Applicant? A. No.

Q. Would you say that in none of the discussions that you have had with any representatives of the North American Company since you have been president has your opinion in connection with any matter pertaining to the Applicant been neither influenced nor changed as a result of those discussions? A. I can say that very definitely.

(Testimony of James B. Black.)

Q. To what extent, if any, have your discussions with Mr. Freeman affected the financial policies of the Applicant? A. None whatsoever.

Q. What about its accounting policies?

A. No effect whatsoever.

Q. To what extent have you sought the advice of the North American Company representatives on financial or operating problems confronting you as president of the Applicant? [1174]

A. The only time I have sought any advice was during the refunding operations of 1936, and several times I talked to Mr. Fogarty about the strength of the bond market, what he thought the general course would be and about the prices that he thought our bonds might stand. May I correct that? There was one additional incident that arose out of our sale in January or February of 1938 of $15,000,000 of bonds to the group of insurance companies and one bank—a private sale—and I made some inquiry from him as to how much discount he thought we would have to make in price from market to those purchasers in order to interest them. With those exceptions I have made no inquiries with respect to policy during the five years that I have been president.

Q. Do you recall the occasion for the telephone calls that you had with Mr. Fogarty or Mr. Freeman or some of them?

A. Not specifically. I call them up if there is something important that I think they ought to

(Testimony of James B. Black.)

know about; or if I think it is my duty to inform them of, I call them. There is no regular time to call.

Q. Do you recall the last time you talked to either of those gentlemen over the telephone?

A. I think I talked to Fogarty in July of this year to tell him about this San Francisco negotiation for the lease of our distribution properties to the City of San Francisco. That was the first lease. I don't believe I have [1175] talked to him since.

Q. Did you give him information or did you seek his advice as to a particular course of action on the part of the Applicant?

A. Oh, entirely information. I don't think he has any knowledge whatsoever of this situation except in its most general terms. I told him at that time that we were making progress or had come to a decision, I am not sure which. But at the time I called him I was quite sure we would come to a decision—conclusion, rather—with the City with respect to a form of lease. And we did subsequently come to such a conclusion. That was the first of three conclusions that we have come to with them.

Q. Have you talked to him about the subsequent conclusions? A. No.

Q. Was there some matter that arose at that particular time that made a telephone call necessary?

A. I should think likely that that was the reason that I called him. I don't remember specifically. But

(Testimony of James B. Black.)

that was at the time I know when we were active in the negotiations for the first agreement.

Q. At that time did he give you any suggestions in reference to what course you should pursue?

A. None whatsoever. [1176]

Q. To what extent, Mr. Black, are you familiar with the relationships of the North American Company and its subsidiaries?

A. Well, not at all now. I am not in touch at all.

Q. You were familiar with the contacts of the North American Company and its subsidiaries prior to the time that you ceased being in the employ of the North American Company, were you not?

A. I was quite familiar with respect to the California properties. I didn't follow the others in great detail. I knew generally their relationship.

Q. During the period you were vice-president of the North American Company did you have occasion to become acquainted with the type and form of supervision exercised by that company over its subsidiaries?

A. Yes. I knew in general the forms that it took.

Q. Have you ever sent a copy of Applicant's budgets to the North American Company?

A. No.

Q. They have never received such budgets either prior to the time they were submitted to the Board for its approval or subsequent thereto?

(Testimony of James B. Black.)

A. No. We don't submit the budget as a whole to the Board for approval. Our budgetary figures are made up largely for the guidance of the officers and the Board is told gener- [1177] ally of the probable requirements during the year. Then, as each specific item is made ready for approval, it is brought before the Executive Committee or the Board—usually the Executive Committee—and specific approval is given to the item.

Q. But an annual budget, cash, operating and production budget, is prepared by the organization?

A. We prepare it for our own information, but that does not come before the Board for approval and is not sent to the North American Company members of the Board.

Q. But the various expenditures incorporated in the budget are brought before the weekly meetings of the Executive Committee as they arise?

A. That is correct. And after they are passed upon they are sent in the form of the report in which they are brought before the Committee to the directors of the North American Company representatives.

Q. Are they also submitted to the directors of the Applicant who are not members of the Executive Committee?

A. Not unless they come up during the Board meeting. Ordinarily they are disposed of in the Executive Committee.

Q. Do you know whether a copy of the budgets

(Testimony of James B. Black.)

of the subsidiaries of the North American Company are regularly furnished to the North American Company?

A. They used to be and they kept a running cash fore- [1178] cast for six months ahead in great detail of the subsidiary requirements.

Q. During the time you were there was it customary for the North American Company employees to examine a budget before it was put into effect by the subsidiaries and suggest changes in the budgets?

A. They knew in great detail what was going on with respect to construction budgets. That is, I will say I did with respect to the California properties. Occasionally there might have been some suggestion as to the necessity of some expenditure, particularly as it might relate to the construction of a generating plant.

Q. Is the material furnished by the Applicant to the North American Company of such a nature that its accounting department could determine whether Applicant's expenditures were made for the items included in the budget and when they were made for items not so included?

A. Well, we supply the Executive Committee with the report of the various construction items and they are specifically approved. Then in a further report, which is submitted to the Executive Committee, the various over-runs and under-runs

(Testimony of James B. Black.)

are specifically approved or cancelled, and those items are set forth there in the form that they are originally approved in. Now, perhaps a director could follow those through and at least get a general idea as to the disposition [1179] of them. But there is no report made from the standpoint of how they are entered on the books or the method of accounting. That is purely a construction budget report.

Q. And North American Company does not receive the advice that you speak of until after the action has been taken by the Executive Committee?

A. Never.

Q. Have you ever sought or received the approval of the North American Company before making any expenditures not included in the budgets? A. Never.

Q. Does the Applicant have a system of requisitions which must be filled out and approved before any expenditures or requirements are made?

A. Well, they are all set forth in the budget itself and that must be—I don't quite understand what you mean by "requisitions".

Q. Well, I think requisition forms are, to some extent at least, rather common in utility companies. That is, that a person immediately supervising a particular piece of construction or improvement will requisition the material necessary for the job and that requisition must be approved by some superior of his in the organization.

(Testimony of James B. Black.)

A. Oh, yes. That's all carried on in the regular routine of the divisions. The original authorization comes in [1180] the form of what we call a "G. M." That is a request of the General Manager for the approval of the expenditure, and once that approval is obtained then all sorts of requisitions and forms must be made out and approved by the various people in charge.

Q. Who approves these "G. M.s"?

A. The Executive Committee.

Q. For any amount, regardless of the smallness of the sum?

A. Well, the Division Managers have authority to approve emergency items which may come up, but they are always then put in formal shape and specifically approved later.

Q. So that, generally speaking, the Executive Committee approves all "G. M.s"?

A. Oh, yes. And they are informed and eventually approve the items which have been approved by the Division Managers; the emergency items, the small items.

Q. Does North American Company have anything to do with the approval of such "G. M.s"?

A. Nothing whatsoever.

Q. And are not advised as to such approval except in connection with the reports which have been already introduced in evidence?

A. That's correct.

Q. Does North American Company in any man-

(Testimony of James B. Black.)

ner exercise [1181] any supervision over the preparation of your budget or the expenditure of items included therein or not included therein?

A. Nothing at all.

Q. Since you have been president of the Applicant have you ever conferred with any representative of the North American Company concerning the advisability of a major construction job?

A. I never have.

Q. Would you submit to your Board the advisability of expending a substantial sum of money for major construction project without prior thereto having conferred with the North American Company representatives and received their comments upon the advisability of such project?

A. I would and have. We are doing it constantly. The last one that I recall was the construction of a "G. M." approval for the construction of a new hydro plant for our 1933 program.

Q. Approximately how much money did that involve?

A. 1943 program. I am ten years behind. It involved about three and three-quarter million dollars, and it is the first of several that will be approved in the next few months involving fifteen or twenty million dollars.

Q. Has North American Company been advised of those proposed construction jobs?

A. They have not. They have no knowledge of them [1182] whatsoever as far as I know.

(Testimony of James B. Black.)

Q. No reference is made to those in the reports that have been sent to North American Company?

A. Not in those reports which have been sent. They will be set forth in the "G. M." report when it is approved.

Q. That is, as the expenditure is made?

A. No, as the expenditure is authorized.

Q. And you have had no communication to or from the North American Company in regard to the projects that you just spoke of?

A. None whatsoever.

Q. Has the Board or Executive Committee been advised of such projects?

A. Not in detail. They know that the program is ahead of us and must be approved, and we have discussed generally the alternatives with them.

Q. Those are informal discussions which have not been reflected in the minutes?

A. They have not been reflected in the minutes and there has been no formal action taken on them, but we expect to take formal action on them before the end of the year.

Q. Will those construction projects be commenced before the North American Company is advised in reference thereto?

A. Some of them.

Q. On occasions when you do see Mr. Fogarty or Mr. Freeman [1183] do you discuss with them major construction jobs which are either in progress or contemplated?

(Testimony of James B. Black.)

A. I might tell them what is going on. I wouldn't discuss with them any of the problems that surround them.

Q. If the contemplated construction necessitated the raising of new money by the Applicant would you advise the North American Company?

A. Not until we had decided on how we were going to do it.

Q. If North American Company advised against such construction and the new financing incident thereto, how would such advice influence your determination as to whether or not the matter should be submitted to the Board?

A. The matter would have been submitted to the Board before the action was taken, and if the action had been taken we would go ahead with it.

Q. To what extent did Mr. Hockenbeamer confer with the North American representatives concerning construction projects.

A. He didn't confer at all. He would advise me from time to time what he was doing, but there was no conference with respect to any project.

Q. To what extent has North American Company been advised in reference to major acquisitions made by the Applicant since 1930? [1184]

A. I don't believe there have been any acquisitions since 1930, but if there were they were handled entirely out here and the North American Company directors took no part whatsoever in the

(Testimony of James B. Black.)

negotiations or in the handling of the acquisitions.

Q. There have been no such acquisitions since you have been president? A. No.

Q. Could you summarize the extent of your consultation with the North American Company people in regard to the Hetch Hetchy situation?

A. Well, I could summarize it by saying that it was just a recital of the problem which has been with us for some 15 years and our efforts to solve it. I have kept them posted on the course of the litigation between the City and the Secretary of the Interior and generally the atmosphere surrounding the whole situation. I haven't in any way asked them for any help on it or any advice.

Q. In other words, your communications have been generally in the nature of giving them information? A. That's entirely so, yes.

Q. And keeping them advised as to the developments? A. Entirely so, yes.

Q. Has the Applicant expended any money on campaigns to defeat municipal bond issues in San Francisco with respect [1185] to the acquisition of distributive systems? A. It has.

Q. Has the North American Company given any advice, solicited or unsolicited, as to Applicant's activities in such municipal election campaigns?

A. None whatsoever.

Q. Could you describe the type of problem which you as Applicant's president feel should be submitted to the North American Company in view of

(Testimony of James B. Black.)

the fact that it is the largest stockholder before final action is taken by the Applicant?

A. As a stockholder I don't think that any problem should be considered by it except as it might care to come in our stockholders' meeting and express itself. As directors, the officers of the North American Company who are now on our Board, I think, ought to be kept informed as to what is going on. They ought to have the opportunity, if they care to, to come out here and attend Board meetings and express their opinions.

Q. Has the Board ever requested you to get North American's viewpoint on a matter under consideration? A. Never.

Q. Has any member of the Board ever indicated that in any particular matter the opinion or advice of the North American Company, either in its capacity as stockholder or as a utility expert, might be beneficial? [1186] A. Not to me.

Miss Calkin: I think this is a good place to stop.

The Examiner: We will have the noon recess now until 2:00 o'clock.

(Remarks outside the record.)

The Examiner: Just a minute. We will open the record, Mr. Reporter.

This is Mr. Edward P. E. Troy. Incidentally, his name as it appears in the second session of this hearing is misspelled in the record. If you wish to, you can take it back and fix it. The two initials and

(Testimony of James B. Black.)

the name are run together as one, "Petroy" instead of "Troy".

Mr. Troy, let the record show, has been present at every session of this hearing since his first appearance on the second day of the hearing; has been rather attentively following the proceedings; has consulted at least during the hearing—I don't know to what extent other than that—with Miss Calkin, counsel for the SEC; has had access to and has been examining the transcript of the record at least to a certain extent as we proceeded through this hearing.

Did you want to make a statement, Mr. Troy? You heard what I just said in the record, did you not?

Mr. Troy: I only heard the latter part of it.

The Examiner: You have conferred with Miss Calkin about this case and have been suggesting to her certain questions [1187] to be propounded?

Mr. Troy: Yes.

The Examiner: And perhaps have consulted other than in the hearings that I have not information about?

Mr. Troy: Yes.

The Examiner: You have had access to the proceedings from time to time?

Mr. Troy: Not all of them. I have only read part of them.

The Examiner: You want to make a statement at this time?

(Testimony of James B. Black.)

Mr. Troy: Do you wish me to read this?

The Examiner: Yes. So long as you have brought it up we will settle it now.

Mr. Troy: What?

The Examiner: So long as you have brought it up we will settle it now. What is it?

Mr. Troy: I have here this communication from the Securities and Exchange Commission at Washington:

"United States of America
Before the Securities and Exchange Commission

"At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 19th day of November, A. D., 1940. [1188]

"In the Matter of
PACIFIC GAS AND ELECTRIC COMPANY, et al.,
File No. 31-55

"ORDER DENYING INTERVENTION BUT PERMITTING LIMITED PARTICIPATION IN HEARING

"The Securities and Exchange Commission having on the 4th day of September, 1940, issued its Notice of and Order for Hearing in the above matter;

"Edward P. E. Troy having filed an application to intervene in said proceeding, repre-

(Testimony of James B. Black.)

senting that he is a taxpayer of the City of San Francisco and a consumer of gas and electricity furnished by the above named company;

"It not appearing from the facts alleged in said application that the applicant has sufficient interest in said proceeding to render his admission as a party thereto in the public interest or for the protection of investors or consumers;

"It Is Ordered that said application to intervene be, and the same hereby is denied without prejudice to the right of said applicant to renew his application for leave to intervene and to be made a party to said proceeding at a future date;

"It Is Further Ordered that the said Edward P. E. Troy shall be permitted to participate at any hearing in this matter to the extent of introducing evidence and cross- [1189] examining witnesses; provided, however, that such evidence and cross-examination are competent, relevant and material to the issues involved.

"By the Commission.

"FRANCIS P. BRASSOR,

"Secretary."

Now, do you wish me to read this personal letter?

The Examiner: That is the letter which you received with the copy of the Order?

Mr. Troy: Yes.

(Testimony of James B. Black.)

The Examiner: I think it would be just as well to read it, if you will.

Mr. Troy: This is a personal letter:

"Securities and Exchange Commission
Washington

November 19, 1940

"Office of the Secretary

"Air Mail
"Mr. Edward P. E. Troy
1263 Oak Street
San Francisco, California

"Re: Pacific Gas and Electric Company, et al., File No. 31-55

"Dear Mr. Troy:

"Enclosed herewith is a copy of the Commission's order with reference to your application for permission to intervene in the above proceeding.

"The Commission has authorized me to advise you that [1190] the affidavit attached to your letter of November 14, 1940 does not contain the allegations of fact required by paragraph (b) of Rule 17 of the Rules of Practice, a copy of which is enclosed. In particular your affidavit is deficient in not stating, as required, whether the action you propose to take in the above proceeding is one already taken by another party to the proceeding. If you desire

(Testimony of James B. Black.)

to amend your affidavit to include such information and file an original and eight copies of the same, the Commission, at your request, will again consider your application.

"You will observe the attached order permits you to cross-examine witnesses and introduce evidence subject to the qualification expressed therein. May I suggest that you confer with Miss E. M. Calkin who is representing the Commission in this proceeding.

"The Commission has asked me to express their appreciation for the interest you have displayed in this matter.

"Very truly yours,

(Signed) FRANCIS P. BRASSOR,

Secretary."

I will state that I didn't get an opportunity to confer with Miss Calkin because I didn't receive this until Friday evening, and I called down to the office of the Securities and Exchange Commission and she was not there, but I saw Mr. Clarkson. As Mr. Clarkson stated to me, the proceedings would be over in a few days. Then probably it is not necessary [1191] for me to make further application to the Commission at this time to intervene, but if anything should arise that necessitated it then I will do so.

The Examiner: That is entirely up to you to do just as you like about that.

(Testimony of James B. Black.)

Mr. Troy: I beg your pardon?

The Examiner: That is entirely up to you. You can make a further application or not as you see fit and as you are advised. In connection with your visit to the office, it is true that you had access for a limited time to the transcript on Saturday morning of the proceedings of Friday.

Mr. Troy: Yes. You were very kind to let me see your copy of the transcript. Miss Calkin has been very kind, too. She has let me see hers here at the desk.

The Examiner: You will be afforded an opportunity, then, Mr. Troy, at the conclusion of Miss Calkin's cross examination of Mr. Black to propound any questions which you think may be appropriate after you have conferred with Miss Calkin.

Mr. Troy: Oh, you want me to confer with Miss Calkin first?

The Examiner: I think you should. The letter suggests that you do so, and I think it might be a very wise idea to do so.

Mr. Troy: I know that she has proved herself in this hearing a very able young lady, that she understands what she [1192] is doing and is doing it very efficiently.

The Examiner: We will now continue the hearing until 2:00 o'clock.

(Whereupon, at 12:20 p. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [1193]

(Testimony of James B. Black.)

Afternoon Session

(The hearing was resumed pursuant to the taking of recess at 2:00 o'clock p.m.)

The Examiner: I think that we can resume the hearing, if you are all ready.

Whereupon

JAMES B. BLACK

was produced as a witness by and on behalf of the Applicant, and having been previously duly sworn, testified further as follows:

Cross Examination

(Resumed)

By Miss Calkin:

Q. Mr. Black, did the North American people take any action, other than that described by you on your direct examination, at the time the dividends on the Applicant's common stock were reduced in 1933?

A. That is all that I had knowledge of.

Q. What discussions, if any, did you have in 1936 with the North American people at the time the dividends were increased on the common stock?

A. I don't recall that I had any. We went along during that year with increasing earnings and we decided at the last quarter that the earnings for the year to date, and the prospects for the next few months were good enough to justify the increase in the dividend. We had earned in the previous

(Testimony of James B. Black.)

[1194] calendar year, as I recall, $2.10, and we earned in 1936 $2.55, and our cash position was good and, as I say, the business outlook was good so I felt that it was time to restore the dividend to the 8 per cent basis, and so recommended to the Board.

I did not consult or get any advice from the North American people with respect to the advisability of it.

Q. When were the North American people first advised as to the increase in the dividend?

A. I don't recall. As I recall, they were advised promptly after it was done. Perhaps I may have told them that I was going to recommend it prior to the time that it was done. I don't remember that I did, but it is quite possible that I would have; and if I had been talking with them within a few days of the meeting I no doubt would have told them what I was going to do.

Q. What discussions, if any, have you had since the dividends were increased in 1936 on the common stock with the North American people on that subject? A. Nothing.

Q. Have you had any correspondence with them relating to dividends on the common stock?

A. No.

Q. Have you ever sought North American's opinion as to the propriety of the common stock dividend prior to the time [1195] it was recommended to the Board? A. Never have; no.

(Testimony of James B. Black.)

Q. Was there any understanding between you and the North American people before you left New York to accept the presidency of the Applicant to the effect that you would inform them as to any change in Applicant's dividend policy on its common stock?

A. No; no agreements of any kind with them.

Q. Would you recommend the non-payment of the dividend on the common stock without advising North American of your contemplated recommendation?

A. I think not. I think on a matter of that kind I would advise them on what I proposed to do in the way of recommending, and give them the opportunity of coming out here and stating their position if they had a contrary view.

The Examiner: That is with respect to a reduction or elimination of dividends?

The Witness: Yes.

By Miss Calkin:

Q. Would you do the same with respect to reduction in the present common stock dividends?

A. Yes, I think I should. I think that any matter of that importance that it would be desirable that all members of the Board should be heard on it. I think they should have the [1196] opportunity to discuss it and express their views.

Q. But in that respect would you be advising the North American people in their capacity as di-

(Testimony of James B. Black.)

rectors of the Applicant or in their capacity as representatives of your largest stockholder?

A. Solely as directors.

Q. And you would not give such advice to stockholders like Pacific Lighting Corporation or Sun Life Assurance Company?

A. I wouldn't give the advice to any stockholder.

Q. Mr. Black, I hand you what has been marked for purposes of identification as Commission's Exhibit No. 121, which purports to be a copy of a telegram dated December 17, 1935, from Mr. Doolittle to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 122, which purports to be a copy of a telegram dated December 17, 1935 from yourself to Mr. Doolittle, and I will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 121 and 122.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 121 and 122 respectively.

(The photostatic copies of the documents referred to above [1197] marked Commission's Exhibits Nos. 121 and 122, and were received in evidence.)

By Miss Calkin:

Q. Is it customary for the North American people to inquire as to contemplated Board action with

(Testimony of James B. Black.)

respect to common stock dividends prior to the time of their declaration?

A. No, it is not customary, but occasionally they have done so, and I did so occasionally of Mr. Hockenbeamer when there was any doubt in our mind as to the action that would be taken, because of its effect on Western Power Corporation's income which, in turn, would affect Western Power Corporation——

Mr. Phleger (interposing): You mean North American?

The Witness: No, Western Power—the Western Power Corporation Board action as to Western Power's common dividend would be influenced perhaps by the dividend declared on its holdings of common stock. I don't think it would affect North American's particularly, though to some extent it might; but it would very directly affect the Western Power common dividend policy because it was the practice of Western Power Corporation directors to declare practically all of its earnings out in common stock dividends, and its sole source of income practically was their dividends on the P. G. & E. common stock held by it; and where there was a Western Power Corporation Board meeting prior, in a quarter, prior to [1198] the P. G. & E. Board meeting occasionally I inquired from Mr. Hockenbeamer to get the last up to the minute advice as to what P. G. & E. was apt to do with respect to its

(Testimony of James B. Black.)

dividends in order that Western Power Corporation Board might act intelligently.

Those last two exhibits indicate that Mr. Doolittle made the same inquiry of me and referred specifically to the Western Power Corporation meeting.

By Miss Calkin:

Q. Do *you what* percentage of North American's gross income comes from the common stock dividends declared by the Applicant?

A. Well, its gross income as a corporation?

Q. Yes; corporate income.

A. No, I do not.

Q. Do you know whether or not if North American Company received no dividends from the Applicant it could meet its fixed charges?

A. I haven't those figures in mind now.

Q. Mr. Black, what presidents, other than yourself and employees of the former subsidiaries of the Western Power Corporation who were formerly employed by the North American Company or its subsidiaries, have been employed by the Applicant?

The Witness: May I have that question again?

[1199]

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

The Witness: I don't understand the question.

Miss Calkin: It may be a little complicated. I will rephrase it.

(Testimony of James B. Black.)

By Miss Calkin:

Q. Does the Applicant have any persons on its payroll other than yourself and former employees of the subsidiaries of Western Power Corporation, who were formerly employed by the North American Company or its subsidiaries?

A. No, not that I know of.

Q. Are there any former employees of the Applicant now employed by the North American Company or its subsidiaries?

A. Not that I know of.

Q. So you would say, with the exception of the former employees of the Western Power Corporation, there has been no transfer of employees from the Applicant to the North American Company or its subsidiaries, or vice versa?

A. I am certain there have been no transfers. The only reason I qualify my answer is because there may be some engineer or some employee who might have gotten a job with the North American Company subsidiaries that I may never have heard of.

Q. There is no policy of exchanging personnel?

[1200]

A. No. As far as I know the North American Company officers, and the officers of subsidiaries of the North American Company, have no acquaintanceship with our organization at all, except perhaps half a dozen men.

(Testimony of James B. Black.)

Q. Does the Applicant furnish the North American Company with personnel data on men holding key positions with the Applicant?

A. None whatsoever; no personnel data of any kind.

Q. Do you know whether or not employees employed by one subsidiary of the North American Company are frequently employed by other subsidiaries of the North American Company?

A. No, I don't know that.

Q. Do you know whether the North American Company keeps personnel data in its office on the employees of its subsidiaries?

A. No, I don't know whether they do or not.

Q. To what extent have you discussed personnel problems with the North American people?

A. Not at all.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 123, which purports to be a copy of the letter dated August 13, 1937 from Mr. Mortimer to yourself, and what has been marked for the purposes of identification Commission's Exhibit No. 124, which purports to be a copy of a letter dated August 18, 1937 [1201] from yourself to Mr. Mortimer, and I will ask you if you can identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 123 and 124.

(Testimony of James B. Black.)

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 123 and 124 respectively.

(The photostatic copies of the documents referred to were marked Commission's Exhibits Nos. 123 and 124, and were received in evidence.)

The Witness: Are you interested in the story behind those?

By Miss Calkin:

Q. If you have any explanation to make, yes.

A. The explanation is this: That Mr. Corbett, who is referred to in that letter, was an employee of the Engineering Department of the Pacific Gas and Electric Company, and prior to my being made president of the company he got into difficulties with various members of the organization, and it ultimately resulted in his separation from the organization.

Very shortly thereafter he undertook a letter-writing campaign to all of the directors of the company, and the officers, and I think he covered all of the directors of the North American Company, complaining in great detail about the [1202] way he had been treated, and making all sorts of personal accusations against his associates and his superiors in his department, and the officers of the company.

(Testimony of James B. Black.)

I investigated when I was made president and I found that he had been given every consideration and I thought had been treated fairly, and that there was nothing really that I could do about it. He had made such a record that the matter would just have to rest as it was.

This letter from Mr. Mortimer, I presume, was directed to him by Mr. Corbett as a director of the North American Company, and refers to one of the communications that he received from Mr. Corbett.

Q. Mr. Mortimer was at that time a director of the North American Company?

A. I think he was. That is probably why he got the letter because Mr. Corbett, I know, wrote a great many letters to our directors and to the North American Company directors during that period.

Q. Do you know Mr. Mortimer personally?

A. Yes.

Q. Is he in the employ of the North American Company?

A. I don't know that. He was at the time I left New York. I don't know what his status is at the present time.

Q. He was associated with the North American Company [1203] during your acquaintance with him?

A. Yes. He afterwards became a director, and whether he was at that date I am not sure, but it is quite likely.

(Testimony of James B. Black.)

Q. Have you ever requested the North American Company to recommend to you someone to fill a position open with the Applicant? A. Never.

Q. If a major difference of opinion arose between yourself and any of the key men in your organization, or a member of your Board, would you seek North American's advice as to your action in respect thereto? A. I would not.

Q. Have you ever done so?

A. I never have.

Q. Have you ever submitted to North American the advisability of employing or discharging a key member of your personnel? A. Never.

Q. Were there any substantial changes made in the organization of the personnel upon your becoming president? A. No.

Q. Is there any similarity between the organization of the Applicant's personnel and that of other subsidiaries of the North American Company?

Strike the word "other". [1204]

The Examiner: Objection sustained.

A. I really don't know how to answer that. They are all different, but they are all organizations designed to operate and construct public utility property. I don't know—if I had to give you a short answer I would say that our organization is different from any that I know about.

Mr. Phleger: Wouldn't you say in the language of the movies, that any similarity of names to persons living and dead was purely coincidental?

(Testimony of James B. Black.)

The Witness: Well, I would say that the organization of the Pacific Gas and Electric Company had grown up, the organization has grown up over the years and is changing a little all the time, as all organizations do, and that growth and its growth today and changes are based purely on the experience of the management and its determination of what is best for the company.

By Miss Calkins:

Q. I believe you testified that to your knowledge the firm of Sullivan & Cromwell has never been employed by the Applicant?

A. Not to my knowledge; certainly not since I have been president.

Q. Do you know whether or not the Applicant has paid that firm any fees representing an underwriting syndicate [1205] formed in connection with any of Applicant's financing?

A. No, not since I have been president.

Q. Who are the Applicant's regular attorneys?

A. Well, we have a staff of attorneys, and Mr. Bosley is our general counsel; and Mr. Straub is our general attorney; and we employ other attorneys. They are all local, with the exception of one firm in Washington. We have employed Mr. Olney, and we employ local attorneys in local cases around the system.

Q. Is Mr. Olney a Washington attorney?

A. No; a San Francisco man. We have employed Mr. Orrick, and we have employed Mr.

(Testimony of James B. Black.)

Chickering in minor cases—I don't think he has been employed in any very important ones. We have employed Mr. Garret McEnerney and Mr. Herman Phleger, and Mr. Gerdes.

Q. Do you know whether or not any of those attorneys regularly represent the North American Company or any of its subsidiaries?

A. I don't think they represent it regularly or irregularly. I don't know of any connection.

Q. Does your Washington attorney have any connection with the North American Company?

A. Not that I know of.

Q. Do your rate experts confer with the North American people regarding Applicant's rate structure? [1206]

A. No. They perhaps exchange information with them through the Edison Institute. There is a good deal of that going on all the time. But I don't know of anything else.

Q. Do you know whether or not the North American Company gives its subsidiaries any advice on rate matters?

A. Yes; the North American Company has a rate department, or at least a man, or did have, but I can't testify as to the last five years, who does a great deal of work in advising the subsidiaries with respect to their rate structures.

Q. Did that expert, or his department, give the Applicant any such advice during the period 1930 to 1935? A. No.

(Testimony of James B. Black.)

Q. Are taxation problems of the Applicant submitted to North American's accounting department? A. Never.

Q. Has the North American Company ever advised Applicant in respect to tax matters?

A. No.

Q. Does it give such advice to its subsidiaries?

A. Yes, it does, or did. I shouldn't testify to the last five years because I am not familiar with what happened during that period. But as far as I know, up to 1935, they did advise on tax matters with their subsidiaries.

Q. Did the North American Company during that period have tax experts in its employ? [1207]

A. Yes.

Q. Were they primarily engaged in advising subsidiaries of the North American Company on tax problems?

A. At least one of them was advised, that is, engaged entirely on tax problems.

Q. Did that person give the Applicant any advice on tax matters during that period?

A. Never to my knowledge.

Q. Is the system of accounting used by the Applicant the same as that used by subsidiaries of the North American Company?

A. I don't know what system the subsidiaries of the North American Company use, but our classification of accounts is promulgated by the Railroad Commission of the State of California.

(Testimony of James B. Black.)

Q. The North American Company does maintain an accounting department, does it not?

A. Yes, in New York; yes.

Q. Do *you what* contacts, if any, that department has with the subsidiaries of the North American Company. A. I don't know now; no.

Q. Do you know anything about the contacts during the period you were in the employ of the North American Company?

A. Well, very little except the contacts with the subsidiaries of the Western Power Corporation. The North [1208] American Company accountants knew of the classification of accounts of the Railroad Commission of California under which these subsidiaries carried their accounts, and they knew generally, I think, of the practice of the California subsidiaries. At least, I tried to keep myself informed.

Q. Do you know whether or not the accounting department performs services for the North American subsidiaries, or did during that period?

A. You mean the accounting department of the North American Company?

Q. Yes.

A. I don't recall that they did. The accounts, I know, were kept out here; the accounts of the California subsidiaries were kept out here.

Q. Do you know whether or not the subsidiaries of the North American Company seek the advice

(Testimony of James B. Black.)

of the accounting department of the North American Company?

A. I don't believe the California companies did. I don't think there was any occasion for that.

Q. Are the services of the North American's accounting department available to the Applicant?

A. No. They never have been offered.

Q. Have they ever been used?

A. They never have been used.

Q. Would you say that the North American Company had [1209] never in no manner affected the accounting practices of the Applicant?

A. I should say that, yes.

Q. Does the North American Company have an insurance expert in its employ?

A. I don't know as to the last five years. It is my recollection that there was someone there who had some knowledge of insurance practices and was available for the use of the subsidiaries, but I am not sure. I am not clear on that.

Q. Do you know whether or not the Applicant has ever received advice on insurance matters from the North American Company?

A. I know we have not. We have never asked it.

Q. To your knowledge does the North American Company have a financial interest in any insurance company? A. Not to my knowledge.

Q. Who determines with what companies the policies of the Applicant shall be placed?

A. I do.

(Testimony of James B. Black.)

Q. Have you ever discussed the advisability of placing insurance with particular insurers with the North American people? A. No; never.

Q. Generally speaking, is the insurance of the [1210] Applicant carried with the same companies as it was carried prior to your becoming president of the Applicant?

A. It is, yes. We have changed our insurance policy very materially.

Would you be interested in my testifying as to that?

Q. You might explain it briefly.

A. Generally, prior to my election as president, the company carried most of its own insurance and they had a reserve of, I think, $3,000,000 set up as an insurance reserve.

I changed that to a policy of insuring with companies, with underwriters, all of what might be called catastrophic insurance, or catastrophic coverage, which would take care of very large losses, and limiting the amount that the company would carry very materially.

The class of coverage that the company carries itself is on the type of property where the exposure is not great, and there couldn't be any likelihood of large loss occurring.

But the catastrophic coverage will run up to as high as $12,000,000, in case of earthquake and fire losses on the system. That has all been placed with companies, largely through brokers, and without

(Testimony of James B. Black.)

consultation or even discussion with the North American directors.

Q. Have any of the North American people ever recommended the placing of Applicant's policies with any [1211] particular company?

A. Never.

Q. To what extent, if any, has the North American Company been consulted with reference to the Applicant's franchise problems?

A. Not at all.

Q. Have any of its representatives ever participated in campaigns or franchises sought by the Applicant? A. Never.

Q. Mr. Black, are you familiar with the fiscal service contracts which were in effect between the North American and its subsidiaries prior to the effective date of the Public Utility Holding Company Act of 1935?

A. I don't recall them in any detail. I know that the North American Company did perform certain fiscal services for its subsidiaries, usually of the nature that would have to be performed by banks or trust companies in New York City, and they were charged for those services.

Q. Did the Applicant ever have such a contract with the North American Company?

A. Never.

Q. Do you know why not?

A. There was no occasion. It conducts its own business affairs in New York and San Francisco,

(Testimony of James B. Black.)

whatever they have to conduct, and they still do.

[1212]

Q. Did the North American Company, although such a contract did not exist between it and the Applicant, render any services to the Applicant of a financial or fiscal nature from 1930 to 1935?

A. The only thing that might come under that head that I recall is the services which I performed without charge for Mr. Hockenbeamer in signing preferred stock certificates of the Great Western Power Corporation and the California Electric Generating Company which were transferred in New York.

Q. Did the North American Company ever act as transfer agent for the Applicant? A. No.

Q. Did it ever act as coupon paying agent?

A. No.

Q. Did it ever perform any of the services provided for in the fiscal service contract?

A. No.

Q. Are you acquainted with the fact that the North American Company at one time owned and operated a private wire between it and several of its subsidiaries? A. Yes.

Q. Do you know whether or not the Applicant's offices were ever connected with that wire?

A. No, they never were, nor were the California [1213] subsidiaries.

Q. There has been some testimony concerning the Station Advisory Committee which, I believe,

(Testimony of James B. Black.)

was composed of the principal engineers from the operating companies in the North American system. Are you familiar with that committee?

A. Yes; generally.

Q. What were its functions?

A. It assembled data on steam plant economies on the various systems and various subsidiaries of the North American Company, and prepared reports on the various steam plant operations, which were submitted to the executives of the North American Company's subsidiaries and to the officers of the North American Company.

Q. Did the Western Power Corporation subsidiaries, prior to 1930, have representation on that committee?

A. I am not sure as to that, but the California subsidiaries received copies of the reports of the Station Advisory Committee, and I am quite sure had representatives on it, although I do not recall specifically.

Q. Has the Applicant ever received copies of the reports of that committee?

A. Never to my knowledge.

Q. Has the Applicant ever been represented on that committee? [1214] A. No.

Q. Why not?

A. As I say, it runs its own business, it has its own problems, and it has never taken part in any of the activities of the North American Company system. There has been no occasion for it.

(Testimony of James B. Black.)

Q. Has the North American Company ever requested that engineers employed by the Applicant serve on this committee?

A. Never to my knowledge.

Q. If the invitation were made would it be accepted?

A. No. I don't think it would be worth while for us to spend time and money on that sort of an activity.

Q. Have any representatives of the North American Company ever discussed with you the advisability of the Applicant having representation on this committee? A. They have not.

Q. I am informed that a number of group purchase contracts have been executed between the North American Company and various manufacturers for the purpose of obtaining discounts for its various operating companies based upon group purchases. Are you familiar with those group purchase contracts?

A. I was; yes. The California subsidiaries of the North American Company participated in some of them. They [1215] were able to get discounts on the purchases from certain manufacturers of certain equipment which they could not have earned as a result of their own volume of purchases.

Q. Has the Applicant ever been one of the operating companies listed in said contracts as entitled to the benefits of such discounts? A. Never.

(Testimony of James B. Black.)

Q. Has the Applicant ever received discounts as provided for by the group purchase contracts in existence between the North American Company and the manufacturers? A. Never.

Q. Has any representative of the North American Company ever discussed with you the desirability of including the Applicant as one of the companies entitled to receive the benefits of such contracts? A. No.

Q. Has the Applicant ever requested the North American Company to be included as one of the beneficiaries in its group purchase contracts?

A. Never.

Q. Why has the Applicant not deemed it necessary or advisable to participate in these contracts?

A. Well, there is reason enough in that our purchases out here would probably give us the maximum discount. In any event, we wouldn't care to participate in any such [1216] contract with the North American Company, or any other company.

Q. Are you familiar with the departments into which the personnel of the North American Company are divided? A. I was.

Q. What departments were they?

A. There was the accounting department, the statistical department, the treasury department; and they had a publicity department, a rate department —that is all I recall at the moment.

Q. How about the secretary?

A. The corporate secretary's department.

(Testimony of James B. Black.)

The Examiner: We will take a short recess at this time.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: You may resume.

By Miss Calkin:

Q. Have any of the departments which you have named ever, to your knowledge, performed any work for the Applicant? A. They have not.

Q. I am informed that Mr. Freeman, Sr., Vice-President of the North American Company, has charge of the reports made by that company and its subsidiaries to the Securities and Exchange Commission, and supervises North American's accounting problems. Has Mr. Freeman, or any of his [1217] subordinates, ever supervised or participated in the preparation of any registration statement filed by the Applicant with the Securities and Exchange Commission?

A. They have never taken any part in such preparation. Mr. Freeman, since he has been a director would, of course, be furnished with copies of any registration statement which we filed, but I don't believe that he was a director at the time we did our last public offering in 1936.

Q. Was Mr. Freeman furnished a copy of the registration statements prior to the time they were printed and in final form?

(Testimony of James B. Black.)

A. He would be, in common with all other directors, furnished with copies of the reports just before they were ready to be signed. Probably the final report would be all that they would see, the final statement.

Q. Does Mr. Freeman have general supervisory authority over Applicant's Accounting Department?

A. He has no authority whatsoever over it.

Q. To what extent has he participated in accounting problems of the Applicant?

A. Not at all.

Q. I am informed that Mr. Reed Hartel, secretary of the North American Company, has charge of and supervises matters relating to the corporate record, in compliance with the corporate laws, for the North American Company [1218] and its subsidiaries. Does, or has Mr. Hartel performed any work of a similar nature for the Applicant?

A. Nothing at all.

Q. Does Mr. Hartel prepare the draft of the minutes of the Applicant's Board of Directors?

A. He does not.

Q. What about the annual stockholders' meeting? A. He has nothing to do with it.

Q. Does Applicant's corporate department confer with Mr. Hartel regarding the maintenance of corporate records in compliance with various corporate laws? A. Not at all.

Q. Have you ever conferred with Mr. Hartel regarding any matters relating to the Applicant?

(Testimony of James B. Black.)

A. No, I never have.

Q. I believe that Mr. Sealey, treasurer of the North American Company, and Mr. Preger, the comptroller, stand ready to give advice, and frequently do advise North American subsidiaries on accounting matters and practices. Does the accounting department of the Applicant have any contacts with Mr. Sealey or Mr. Preger on such matters?

A. None at all.

Q. Has the North American Company ever advised the Applicant that its accounting department would give free advice on any accounting problems that it might have? [1219]

A. Not to my knowledge.

Q. Have you ever requested that the North American Company make the services of its accounting department available to the Applicant?

A. I have not.

Q. Mr. Black, are you acquainted with the organization located on the 18th floor of the North American Building at 60 Broadway in New York City, composed of a staff of persons on the payroll of some of the operating companies in the North American system?

A. That is a development that took place after I left.

Q. Do you know Mr. C. E. Neal?

A. Yes. He is in charge of the rate department, or was in charge of the rate department of the North American Company.

(Testimony of James B. Black.)

Q. Do you know Mr. E. W. Lenig? A. Yes.

Q. And who is he?

A. He was an assistant to Mr. Smith, who was in charge of the statistical department when I was there.

Q. Are you acquainted with Mr. Johannsen, who also works in that organization? A. Yes.

Q. Do any members of the staff to which I just [1220] referred as occupying the 18th floor of the North American Building in New York City work for the Applicant? A. No.

Q. Has that staff ever done any work for the Applicant?

A. No. It is possible that some incidental reports might have been prepared in that department and were sent to Mr. Hockenbeamer as a matter of accommodation. I don't know that there was—they were never any reports that had to do with the operation of the Pacific Gas and Electric Company. But it is possible that some report might have been prepared there of a comparative nature, for instance, showing the financial setup, or the operating results of utilities all over the country, which might have included the Pacific Gas and Electric Company, and might have been sent to Mr. Hockenbeamer. That would be the extent of it. I don't know that that has occurred.

Q. Have you ever had any communications with the personnel of that organization?

(Testimony of James B. Black.)

A. Never.

Q. Are any of the employees of that organization on the payroll of the Applicant?

A. They are not.

Q. Does the Applicant contribute to the rental of the space occupied by the personnel that I have just referred to? [1221] A. It does not.

Q. Does the Applicant have no work to be performed which, in your opinion, can best be done in New York City by the staff? A. It has none.

Q. Have you ever discussed with the representatives of the North American Company the advisability of the Applicant having representatives on this staff? A. I never have.

Q. Has this group of persons ever assisted the Applicant in the preparation of its registration statements? A. Never.

Q. Mr. Black, could you compare the contacts which existed between the North American Company and Applicant and the work, if any, performed by the North American Company for the Applicant from 1930 to 1935, with such contacts and such work as have been performed since then?

A. There has never been any work performed by the North American for the Pacific Gas and Electric Company.

Q. I have been informed that certain changes occurred in 1935 with respect to the relationship between the North American Company and certain companies in which it had substantial investments.

(Testimony of James B. Black.)

What changes occurred at that time in relationship between the Applicant and the North American Company, that time having specific reference to the effective [1222] date of the Public Utility Holding Company Act of 1935?

A. The relationship of the North American Company to the Pacific Gas and Electric Company is purely as a stockholder and, as such, it has been a stockholder since 1930.

Q. In other words, it is your opinion that Applicant's relation to the North American Company is the same today as it was during any time between 1930 and 1935?

A. Purely as a stockholder from 1930 to date.

Q. Do you submit a draft of the Applicant's annual report to stockholders to the North American Company prior to the time it is printed?

A. I submit a draft, if I can get the time to do it, to the directors of the Pacific Gas and Electric Company, and occasionally they have gotten—I have been able to get them to the officers of the North American Company who are directors of the Pacific Gas and Electric Company, but unfortunately I have never been able to get it to them in time to enable them apparently to make any suggestions with respect to any changes or ideas that they may have prior to the printing of the report?

Q. To what extent, if any, has the North American Company participated in the preparation of this report?

(Testimony of James B. Black.)

A. They have not participated to any extent.

Q. Mr. Black, referring to Commission's Exhibit No. 69, and calling your attention to the final paragraph of [1223] this letter, what does the "pamphlet report" refer to?

A. That refers to the annual report to stockholders. That word was probably used to distinguish it from the quarterly interim reports which are made by the president to the stockholders.

I might say that I always requested a few extra copies of that report from Mr. Hockenbeamer because the people around the Street in New York would occasionally call for a copy of that report, or ask us to get it for them, and in order to avoid annoying Mr. Hockenbeamer by writing letters in each individual case I used to get a few reports and hand them out.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 125, which purports to be a copy of a letter dated March 29, 1930 from Mr. Freeman to yourself, and what has been marked for purposes of identification Commission's Exhibit No. 126, which purports to be a copy of a letter dated April 5, 1937 from yourself to Mr. Freeman. Can you identify those documents?

A. Yes.

Miss Calkin: We offer in evidence Applicant's Exhibit No. 125 and 126.

The Examiner: They will be received in evidence and marked Applicant's Exhibits Nos. 125 and 126.

(Testimony of James B. Black.)

(The photostatic copies of the letters referred to above were [1224] marked Commission's Exhibits Nos. 125 and 126 and were received in evidence.)

The Witness: One of them—do you wish me to comment on them?

By Miss Calkin:

Q. Yes. You may do so.

A. The one from Mr. Freeman to me contains his comments on the 1936 annual report of the Pacific Gas and Electric Company. He states that it makes an excellent showing and he congratulates us, and so forth. Then he says:

"There are one or two points regarding which I thought I would drop you a line for whatever my thoughts may be worth."

Then he comments on the presentation of the income accounts and the balance sheet, and gives his ideas as to how they could be made more readable.

Q. Is he commenting upon the draft of the 1936 annual report or upon that report in its final form?

A. It sounds to me like it was the final report. March 29 is the date. Our reports, I think, must be in the hands of the stockholders at least ten days prior to the annual meeting. I am quite sure that is the final report. In any event, the report would be in the printers' hands by that date.

Q. So the comments made by Mr. Freeman in his letter [1225] to you did not result in a change in the stockholders' report for 1936?

(Testimony of James B. Black.)

A. No, no. It would have come entirely too late if he was referring to the draft. It would have come entirely too late to have been incorporated in the final report. It is quite likely that he is referring to the final report which we sent him.

Mr. Phleger: Mr. Black, the changes suggested by him have never been made in any later report, have they?

The Witness : Perhaps I had better read what it says. (Referring to the communication) I think one of them was accepted. I note I say:

> "It has been the practice to follow the order of the Auditor's reports in setting up financial statements, but I believe your suggestion as to the precedence of the income statement is a good one."

Our auditors, Haskins & Sells, as I recall, submit their report with their certificate to us in a form which sets up the balance sheet first and the income statement second. Mr. Freeman suggested that that be reversed. I think I did reverse it. I think it was a good suggestion. That was not done that year.

His other suggestions were not followed.

The Examiner: Then or at any time thereafter, as I understand it? [1226]

The Witness: Yes. They were not followed at that time in any particular. But, as I recall, and my memory is refreshed by the statement here, the sentence which I read would indicate that we prob-

(Testimony of James B. Black.)

ably did set up the income statement first in subsequent reports.

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 127, which purports to be a copy of a letter dated March 27, 1939 from Mr. Fogarty to yourself. Can you identify that document?

A. Yes. That is just a congratulatory letter on the 1938 annual report.

Miss Calkin: We offer in evidence Commission's Exhibit No. 127.

The Examiner: It will be received in evidence and marked Commission's Exhibit No. 127.

(The photostatic copy of letter referred to was marked Commission's Exhibit No. 127 and was received in evidence.)

By Miss Calkin:

Q. Does Commission's Exhibit No. 127 constitute the only correspondence which you had with Mr. Fogarty regarding the 1938 annual report to the stockholders?

A. That is the only one that I recall.

Q. Mr. Black, do you have any information gleaned from what others have told you, or from documents that you have [1227] examined since you have been president of the Applicant, as to how the National City Company got the leadership of Applicant's financing about 1921?

(Testimony of James B. Black.)

A. No. I don't know anything about that.

Q. Was the National City Company ever considered a California house? A. Not by me.

Q. Do you know what representative of the National City Company carried on most of the negotiations with the Applicant respecting its financing prior to 1930?

A. I only know by hearsay as to that. I understood that Mr. Stanley Russell was the man who carried on the negotiations in regard to the Pacific Gas and Electric Company affairs.

Q. Contemporaneous with the 1930 negotiations, resulting in Applicant's acquisition of the subsidiaries of Western Power Corporation, did you have any discussions with Mr. Hockenbeamer concerning who would head the future financing of the Applicant? A. None.

Q. Was there anything said about what bankers would participate in such financing as members of underwriting syndicates? A. In 1930?

Q. Yes. [1228] A. Nothing was said.

Q. The subject of Applicant's future security issues was never discussed from the standpoint of who the underwriters would be?

A. Not by me.

Q. Did Western Power Corporation, or any of its subsidiaries, do any financing from 1925 to 1930?

A. Yes; there were several pieces of financing.

Q. Who headed the underwriting syndicate in

(Testimony of James B. Black.)

connection with the financing of the subsidiaries of Western Power Corporation?

A. The San Joaquin Light and Power Corporation financing, I recall an issue, I think it was $25,000,000 in 1927, was handled by Pierce-Fair & Co., that is, jointly by Pierce-Fair & Co. and Blyth Witter & Co.

If there was any of Great Western Power financing that went over into that period—I know there was some in the previous five years, and it was headed by E. H. Rollins & Sons.

Q. Did you handle that financing?

A. No.

Q. Where was it handled?

A. Subsequent to the acquisition of control by the North American Company of Western Power Corporation in 1927, it was handled in the North American Company offices. Prior to that time it was handled largely by Mr. H. P. Wilson. But [1229] prior to 1924 it would be handled by Mr. Wilson and Mr. Mortimer Fleishhacker, who was president of the Great Western Power Company of California.

Q. The $25,000,000 issue of the San Joaquin Company that you have testified to occurred after North American acquired control of that company through Western Power Corporation, did it not?

A. As I recall that it was in 1927.

Q. That was subsequent to the North American's acquisition of the control? A. That is right.

(Testimony of James B. Black.)

Q. And you say that financing negotiations in respect thereto were carried on in New York City?

A. Yes. Mr. Dame and Mr. Gruhl carried them on.

Q. What banking houses, if any, did you consider would have a historical interest in the Applicant's financing, which houses had been previously associated with the financing of the Western Power Corporation system?

A. It would be purely historical. Rollins & Sons, that is, E. H. Rollins & Sons, had been identified with the Great Western Power Company of California financing, and with Western Power Corporation, and the old Bonbright & Co., the old firm, and Pierce-Fair & Co., and Blyth Witter, at that time, had been active in the San Joaquin Light & Power financing. [1230]

Q. I believe the evidence shows that the Applicant issued $25,000,000 principal amount of bonds in July of 1930, which issue was headed by the National City Company. What part, if any, did you have in the determination of the Applicant to issue these bonds?

A. I had nothing whatsoever to do with it.

Q. Did Mr. Hockenbeamer confer with you regarding the issuance of these securities as to the price at which they were to be sold, and related matters? A. He did not.

Q. Who selected the National City Company to head this piece of business, do you know?

(Testimony of James B. Black.)

A. I don't know; I assume it was Mr. Hockenbeamer.

Q. Did Mr. Hockenbeamer, or any then member of Applicant's Board, consult you regarding who should be syndicate manager for this issue?

A. No.

Q. Did you have anything to do with the selection of other members of this syndicate?

A. I did not.

Q. Who was the American Securities Company at that time, if you know?

A. That was the security affiliate of the American Trust Company.

Q. In San Francisco? [1231]

A. In San Francisco; yes.

Q. Was Pierce-Fair & Co. a California house?

A. Yes.

Q. Was E. H. Rollins & Sons a California house?

A. No.

Q. Did you request Mr. Hockenbeamer to give consideration to any banking firm, either those which did or did not get a participation in the July 1930 issue? A. I don't believe I did.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 128, which purports to be a copy of a telegram dated July 22, 1930, from Dean Witter to yourself, and I will ask you that if you can identify that instrument?

A. Yes. That is a telegram from Dean Witter to me, who has his investment, and his brokerage

(Testimony of James B. Black.)

house here, Dean Witter & Co. dated July 22, asking me to intercede for him in his behalf with Mr. Hockenbeamer in connection with the offering which the Pacific Gas and Electric Company was considering at that time, bond offering.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit No. 129, which purports to be a copy of a telegram dated July 22, 1930, from yourself to Mr. Witt. Can you identify that document?

A. Yes. It refers—it is a wire which I sent to [1232] Mr. Witter to the effect that the subject of his wire had been under discussion several weeks, but that I knew of no decision to proceed.

It further says: "The matter is in the president's hands"—that refers to Mr. Hockenbeamer—"and suggest your close contact with him. Regards."

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 128 and 192.

The Examiner: They will be received in evidence and marked Commissioner's Exhibits 128 and 192 respectively.

(The photostatic copies of documents referred to were marked Commission's Exhibits Nos. 128 and 129, and were received in evidence.)

By Miss Calkin:

Q. Upon the receipt of Commission's Exhibit No. 128, did you request Mr. Hockenbeamer to give Dean Witter & Co. a participation in the 1930 issue?

(Testimony of James B. Black.)

A. I did not. As far as I recall that was the only communication that I had with him.

Q. I now hand you what has been marked for purposes of identification Commission's Exhibit 130, which purports to be a copy of a telegram dated July 24, 1930 from yourself to Mr. Hockenbeamer, and what has been marked for purposes of identification Commission's Exhibit No. 131, which purports to be a copy of a telegram dated July 24, 1930 from Mr. [1233] Hockenbeamer to yourself, and will ask you if you can identify those documents? A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits Nos. 130 and 131.

The Examiner: They will be received in evidence and marked Commission's Exhibits Nos. 130 and 131 respectively.

(The photostatic copies of the telegrams referred to were marked Commission's Exhibits Nos. 130 and 131 and were received in evidence.)

A. (continuing) —The first telegram is one from me to Mr. Hockenbeamer stating:

"Am informed various sources yesterday and today that you have sold block of four and onehalf's stop if story correct would appreciate details stop regards."

Q. Was Applicant's No. 131 the first knowledge you had that the Applicant sold the bonds issued in 1930?

(Testimony of James B. Black.)

A. Apparently it was because Mr. Hockenbeamer replies on July 24th and gives the details. He says:

"We have sold twenty five million dollars first refunding four and onehalfs due 1960 to National City Company at ninety three and onehalf costing four point nine two stop Railroad Commission hearing set for Friday this week and we are promised prompt action."

[1234]

Q. I hand you what has been marked for purposes of identification Commission's No. 132, which purports to be a copy of a letter dated July 28, from yourself to Mr. Witter. Can you identify that document?

A. Yes. That is a letter from me to Mr. Witter in which I state I was sorry to learn that he did not land in first place in the financing syndicate for the recent issue of the Pacific Gas and Electric Company bonds.

I further said: "I assume you were successful in getting some to sell. We discussed this subject at the time of our recent visit to San Francisco."

That evidently refers to the visit of Mr. Gruhl and myself here in San Francisco a day or two after the closing of the transaction whereby North American Company obtained the control of Western Power former California subsidiaries, and our visit was to attend the convention of the National Electric Light Association, which was held in San Francisco in that month.

(Testimony of James B. Black.)

Q. What is the subject referred to?

A. The subject evidently refers to the contemplated bond issue. It says: "But until the receipt of your wire we had not heard that it had been definitely decided to proceed."

That apparently was discussed, the possibility of an issue probably was discussed at the time of our visit here in [1235] 1930, and after we left the decision to proceed was made and I, as a director, was not advised of it until I heard about it from one of the houses who was attempting to get a position in the group.

When I was advised of it I told him that the matter had been discussed and referred him to the president, but I didn't know a decision had been made.

The Examiner: Did the discussion you had include the question of whether or not Dean Witter would be included in the underwriting group?

The Witness: Frankly, I don't remember the discussions. *There* were probably of a very vague nature. They were here during this convention and I doubt if there was any detailed discussions at all. Certainly we took no part in formulating the policy as to whether there should be an issue even, let alone who should participate in it.

Miss Calkin: We offer in evidence Commission's Exhibit No. 132.

The Examiner: It will be received.

(Testimony of James B. Black.)

(The photostatic copy of letter referred to was marked Commission's No. 132 and was received in evidence.)

By Miss Calkin:

Q. Other evidence shows that the Applicant sold another $25,000,000 principal amount of its bonds on or about January [1236] 12, 1931 to a syndicate headed by the National City Company and composed of the same houses as the 1930 syndicate. When and from whom did you first learn that this financing by the Applicant was contemplated?

A. I don't recall.

Q. Did Mr. Hockenbeamer, or any member of the Applicant's Board, discuss with you the necessity of this financing before it was consummated?

A. Not to my recollection.

Q. Did you participate in any discussions prior to the formation of the 1931 syndicate relative to who its manager and who its members would be?

A. I did not.

Q. Do you know who selected the National City Company to head the syndicate which purchased this issue?

A. I do not. I assume Mr. Hockenbeamer did.

Q. Is it customary for the issuer or the syndicate manager to determine the membership of the syndicate and their respective participations?

A. I can only testify as to myself. I reserve the right to make final decisions on all points. Of

(Testimony of James B. Black.)

course, I want the advice of the syndicate manager on the members of the group and their participations, but if there is any difference of opinion the decision is made by the company.

Q. Did you personally carry on any negotiations in [1237] respect to the January 1931 issue of the Applicant? A. No.

Q. Did you discuss the question of price or spread with Mr. Hockenbeamer?

A. I have no recollection of it.

Q. Did any banking houses solicit your aid in getting them a participation in the 1931 issue?

A. I don't recall it except—no, Witter's solicitation was the 1930 issue. No, I don't recall it.

Q. During 1930 and 1931 did Blyth & Co., through any of its representatives, ever express to you any dissatisfaction over second position which that company had in the 1930 and 1931 issues?

A. Not to my recollection.

Q. I hand you what has been marked for purposes of identification Commission's Exhibit No. 133, which purports to be a copy of a letter dated November 9, 1934, from yourself to Mr. Hockenbeamer. Can you identify that document?

A. Yes. Do you wish me to comment on it?

Miss Calkin: I would like to offer it in evidence first as Commission's Exhibit No. 133.

The Examiner: It will be received in evidence and so marked.

(Testimony of James B. Black.)

(The photostatic copy of the letter referred to was marked [1238] Commission's Exhibit No. 133 and was received in evidence.)

A. (continuing) This is, in effect, the relaying of some information to Mr. Hockenbeamer which came to me from Mr. Miller, of White, Weld & Company, an investment banking house, relating to the private sale of securities, which I thought he would be interested in. [1239]

Q. You were suggesting the possibility of a private placement of Applicant's bonds through the efforts of White, Weld & Company, were you not?

A. I was not.

Q. Did you receive an answer to this letter?

A. I don't know whether I did or not.

Q. None of the Applicant's bonds were placed at that time by White, Weld & Company?

A. No. The letter did not require an answer, and I don't know whether I did or not, whether I received one or not.

Q. Do you recall whether or not you pursued the matter further than indicated by that letter?

A. No, I don't think I did.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 134, which purports to be a copy of a letter dated February 29, 1935, from Mr. Hockenbeamer to yourself. Can you identify that document?

Mr. Gerdes: You stated February 29. It is February 28.

(Testimony of James B. Black.)

Mr. Phleger: It is 28.

Miss Calkin: It looks like 29 here.

The Examiner: There wouldn't be any 29 that year.

A. Yes. This is a letter which apparently accompanied copies of the registration statement. It is pretty dim and [1240] I cannot make it all out.

Mr. Phleger: Here (indicating) is another copy.

By Miss Calkin:

Q. You did receive such a letter from Mr. Hockenbeamer?

A. Apparently I did. I don't specifically recall it, but it was a letter of transmittal in which he sent to me, as a director, a copy of the registration statement which he was preparing to file with the Securities and Exchange Commission covering the issue of $45,000,000—a bond issue in that amount.

Miss Calkin: We offer in evidence Commission's Exhibit No. 134.

The Examiner: The document will be received in evidence and marked Commission's Exhibit No. 134, being dated February 28 or February 29, whichever it is.

(The document referred to was marked Commission's Exhibit No. 134 and received in evidence.)

A. (continuing) He closes by saying:

"The main thing I want to accomplish at the moment is to give you an opportunity of exam-

(Testimony of James B. Black.)

ining the enclosures with this letter before the meeting."

He evidently refers to the registration statement.

By Miss Calkin:

Q. That letter refers to the bond issue that was sold to a syndicate headed by Lazard Freres & Co. in the spring of [1241] 1935?

A. That is correct.

Q. Do you know whether or not Lazard Freres & Co. got all of the management fee in the first 1935 issue?

A. No. I have forgotten the details of it.

Q. Who is Lazard Freres & Co.?

A. It is an investment banking house in New York.

Q. Do you know of any of its principal partners?

A. I know Mr. Stanley Russell who, I believe, has the title of president; and Mr. James Jackson, who has the title of vice-president, I believe.

Q. Is that the same Mr. Russell that was at one time associated with the National City Company?

A. That is correct.

Q. Why didn't the National City Company head this piece of business, if you know?

A. I think the National City Company was out of business at that time as an affiliate of the National City Bank.

(Testimony of James B. Black.)

Q. That is the bank with which Mr. Charles Mitchell was formerly connected?

A. Yes. He was Chairman of the Board of the bank.

Q. Do you know what firm or banking house Mr. Mitchell is now associated with?

A. Yes; with Blyth & Co.

Q. Does he operate out of the New York office of Blyth [1242] & Co. or out of the San Francisco office? A. The New York office.

Q. Prior to the $45,000,000 1935 issue did Mr. Hockenbeamer confer with you regarding the type of security that was advisable to issue, the amount of the issue, and so forth?

A. I don't recall that he did with respect to the type and the amount. He did confer with me as to the price he ought to get.

Q. Was that immediately prior to the signing of the underwriter's contract?

A. I don't recall precisely. It might have been any time within 30 days; perhaps more often than once.

Q. Was that while you were in New York?

A. Yes.

Q. Do you know who selected Lazard Freres & Co. to head this piece of business?

A. I do not. I assume it was Mr. Hockenbeamer.

Q. You don't know to what extent Mr. Hockenbeamer consulted the directors, other directors, in regard to Lazard Freres & Co.?

(Testimony of James B. Black.)

A. No, I do not.

Q. Did he consult with you?

A. Yes. He asked me about all of the banking houses that were included in the group and some that were not. That was a period of readjustment in the investment banking world [1243] due to the separation of the banking affiliates and changes in groups, and he was attempting to get all the information that he could with respect to their ability to do a good job. He asked me what I thought of the personnel and the organization of a good many of them, and among them was Lazard Freres & Co.

Q. Do you recall Mr. Hockenbeamer having been in New York in the late fall of 1934?

A. I think that was the date that he came east to testify in connection with the Western Power Tax matter. I am not sure of that, but I think he was there about that time.

Q. Did you have any extensive discussion with him at that time about the proposed refinancing of the Applicant in 1935?

A. I don't recall any discussions at that time.

Q. Did Mr. Hockenbeamer ever tell you why he recommended Lazard Freres & Co. to the Board of Directors, as he apparently did from the testimony of the directors who have testified?

A. He told me that he had been doing business with Stanley Russell for a great many years, and had a great respect for him as a bond man; that he was well thought of in the profession; and he

(Testimony of James B. Black.)

said that he had known of Lazard Freres & Co., not the investment banking firm which was newly organized but the commercial banking house which had apparently a rather large position in the investment banking field, at least its [1244] partners did, and that he felt that Mr. Russell had been so helpful to him and had established such a real value as a bond man, that he would carry on with Lazard and help do a good job as head of the syndicate.

That, summed up, is about what he told me.

Q. Do you know whether or not any other banking houses sought the leadership of Applicant's financing in March of 1935?

A. Well, there were a good many of them that were either wanting the leadership or wanting a bigger position than they finally got.

Q. Prior to March 28, 1935, or approximately that date, did the representatives of any banking house request you to assist them in getting the leadership of or participation in this business?

A. Prior to what date?

Q. The issuance or the sale of the bonds, the first issue in 1935?

A. There were several of them talked to me during that period. Whether they specifically asked to be the leader or whether they were just wanting to make sure that they were going to be given a large participation, I don't specifically recall.

(Testimony of James B. Black.)

Q. Did they talk to you in New York?

A. Yes. [1245]

Q. Do you know whether representatives of any of those houses came to the coast in connection with that financing?

A. Mr. Russell, I believe, was out here. I don't know of any others offhand.

Q. Do you recall talking to Mr. Russell about Applicant's financing as early as December 1934?

A. No; I can't recall the dates.

Q. I hand you, for purposes of refreshing your recollection, what purports to be a copy of a memorandum dated December 27, 1934, by Mr. Russell and refer you to the first sentence thereof.

A. I apparently had some conversation with Mr. Russell in December.

Q. You knew as early as that time that the Applicant was contemplating some refunding?

A. Apparently I did.

Q. Do you recall whether or not Mr. Russell discussed with you at that time the desire of Lazard Freres & Co. to head any contemplated financing of the Applicant?

A. I don't recall it, but I presume that was the purpose of his conversation.

Q. Do you recall any efforts subsequently made by Mr. Russell, and prior to the formation of the underwriting syndicate which purchased the 1935 issue, to get you to intercede on his behalf to give

(Testimony of James B. Black.)

the leadership of this piece of business [1246] to Lazard Freres & Co.?

A. I can't say that I didn't have conversations with him; I can't say that I did. I just don't recall it. But I don't recall any particular pressure on his part to get me to intercede for him. I rather gathered the impression from his contacts with me that he, knowing that I was a director of the company, was rather covering the ground. He knew Mr. Hockenbeamer would make the decision and when the time came that he would have to deal with Mr. Hockenbeamer.

Q. You never requested that Mr. Hockenbeamer give the firm of Lazard Freres & Co. the leadership of the March 1935 business? A. No.

Q. Do you know how the following firms got participation in the issue, first, Harriman & Co.?

A. No. I don't know anything about the makeup of those 1936 syndicates or how they were made up, or how the apportionment was finally determined on.

Mr. Phleger: You mean 1935?

The Witness: Yes; the 1935 syndicate. I did, as I previously testified, give to Mr. Hockenbeamer my opinion of the strength of each one of them.

By Miss Calkin:

Q. Did the representative of any of the following [1247] houses call on you, do you now recall, prior to the sale of the first financing in 1935: Blyth

(Testimony of James B. Black.)

& Co., E. B. Smith & Co., First Boston Corporation——

A. (interposing) May I answer those one at a time?

Blyth & Co., yes.

Q. E. B. Smith & Co.? A. Yes.

Q. First Boston Corporation? A. No.

Q. Dean Witter & Co.?

A. I don't recall that he did.

Q. Bonbright & Co.? A. Yes.

Q. E. H. Rollins & Sons? A. Yes.

Q. H. M. Byllesby & Co.? A. I think not.

[1248]

Q. The representatives of the houses which did call on you, did they request that you assist them in getting a participation or the leadership of that syndicate?

A. Well, they called on me expecting that the Board of Directors would have something to do with the determination of the syndicate and they were endeavoring to impress on me the excellence of their firms and their ability to do a good job for the company.

Q. What did you tell them?

A. I told them that the decisions would have to be made in San Francisco, that I would be glad to relay any information that they cared to give me about their situations to Mr. Hockenbeamer and corroborate any of it that I could of my own knowl-

(Testimony of James B. Black.)

edge. That, I think, was generally the answer I gave to all of them.

Q. Do you know why the American Securities Company and Pierce Fair & Co., which firms might be said to have an interest in Pacific Gas and Electric Company financing, did not participate in the 1935 issue?

A. American Securities, I am quite sure, was out of business and I think Pierce Fair was at that time also. If they were not entirely out they were on the way out.

Q. They are no longer in business at the present time? A. No, that is correct.

Q. Do you know Mr. George Leib? [1249]

A. Yes.

Q. He is associated with the New York office of Blyth & Co., is he not? A. He is, yes.

Q. Mr. Black, I hand you what purports to be a photostatic copy of a telegram dated February 19, 1935 from George Leib to Charlie Blyth, and I will ask you to read the same.

Mr. Phleger: Wait a minute now! Oh "read" it, himself? Yes.

By Miss Calkin:

Q. Can you recall what was said at the conference between you and Mr. Leib referred to in that wire?

A. Well, I don't recall the detail of it, but it was apparently an attitude that Brown Harriman was taking with respect to their position in the under-

(Testimony of James B. Black.)

writing group which would give them the advantage over Blyth & Co. I don't recall the detail of it.

Q. I believe the evidence shows that Brown Harriman & Co., Lazard Freres & Co. and Blyth & Co. each got a 20 percent participation in the first piece of financing in 1935, with Lazard Freres having the management of the syndicate. Did you convey your ideas as related to Mr. Leib to Mr. Hockenbeamer?

A. No, I don't think so. I think I had finished talking with Mr. Hockenbeamer on that matter by February 19. I [1250] had given him my views and I might have in subsequent discussions had something to do about it, but I don't recall.

Q. Do you recall the June, 1935 issue of $30,000,000 which was sold to a syndicate also headed by Lazard Freres & Co.? A. Yes.

Q. Do you recall whether or not Blyth & Co. headed that piece of business on the West Coast?

A. There was some division between Blyth and Lazard on that issue. As I recall, it was not a joint leadership, but I think Lazard continued to lead it, but they allowed Blyth & Co. to manage the business west of the Mississippi.

Q. And gave Blyth & Co. participation in the management fee? A. I don't know that.

Q. Do you know how Blyth & Co. succeeded in improving its position in June, 1935 over its position in the March, 1935 issue?

(Testimony of James B. Black.)

A. By keeping everlastingly after Mr. Hockenbeamer, I guess.

Q. Did you intercede on behalf of Blyth & Co.?

A. No. My recommendations to Mr. Hockenbeamer were to the effect that I thought Blyth & Co. ought to head the business. I had several conversations with Mr. Hockenbeamer about that time, but I don't recall I ever got down to detail as to the division of the business or as to any question of [1251] joint management, though it is possible that we did discuss it.

Miss Calkin: Will you mark this as Commission's Exhibit 135, please?

(The document referred to was marked Commission's Exhibit No. 135 for identification.)

By Miss Calkin:

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 135, which purports to be a copy of a letter dated February 21, 1935 from Mr. Leib to Mr. Black, and I will ask you if you can identify that document?

A. Yes. This is a part of the campaign of Mr. Leib to improve the position of Blyth & Co. in the first underwriting group.

Q. You received the original of the letter of which that purports to be a copy?

A. I assume I did, yes.

(Testimony of James B. Black.)

Miss Calkin: We offer in evidence Commission's Exhibit 135.

A. (continuing) This contains a great many statements that I don't know to be true and also a suggestion as to the underwriting syndicate and the allocations between the different members of the group.

The Examiner: The document will be received in evidence [1252] as Commission's Exhibit No. 135.

(The document referred to was marked Commission's Exhibit No. 135 and received in evidence.)

A. (continuing) These suggestions bear very little resemblance to the final group.

By Miss Calkin:

Q. Do you recall whether or not you answered this letter?

A. No, I don't think I did. I don't think it required an answer.

Q. Were you of the opinion at approximately the date of that letter that Blyth & Co. should head the Applicant's 1935 financing?

A. I so recommended to Mr. Hockenbeamer.

Q. Do you remember when you made that recommendation? A. No, I do not.

Q. Was it prior to the March, 1935 issue?

A. Yes. It was the time that he was setting the March issue up.

(Testimony of James B. Black.)

Q. And what did Mr. Hockenbeamer say when you recommended that Blyth & Co. have the leadership of that group?

A. He was non-committal.

Q. Did you have several conversations over the telephone with Mr. Hockenbeamer regarding the leadership of the first 1935 syndicate? [1253]

A. I don't believe I had several. I told him what I thought about it. As I recall, my conversations with him on that point were very short, but I did have conversations with him on other matters relating to it, particularly the strength of the individual banking firms that he was considering including in his group.

Q. Do you ever recall having told Mr. Leib that you were mystified concerning the selection of Lazard Freres & Co. to manage the first piece of 1935 financing and the make-up of the syndicate?

A. I think that's Mr. Leib's interpretation of my statement that I didn't know the exact reasons why it was done. I think therein lies the mystery.

Q. I hand you what purports to be a copy of a telegram dated February 21, 1935 from Mr. Leib to Mr. Blyth and will ask that you attempt to read it. I call your particular attention to the next-to-the-last paragraph thereof.

A. I don't know where he got the idea that I was talking daily with Mr. Hockenbeamer, because it wasn't the fact. I might have talked daily with him for two or three days, but it certainly creates

(Testimony of James B. Black.)

an impression that I was talking with him every day for an indefinite period.

Q. What was the primary subject matter of your discussions with Mr. Hockenbeamer at this period?

A. Well, it was on the matters that I have testified [1254] to with respect to the different banking houses, their strength. And I think at that time he was beginning to think about price. He also had a good many questions to ask about the registration statement, which I presume was filed within a week after the date of this wire.

Q. Will you refer to a telegram in that book—they are arranged, chronologically—dated February 22, 1935 by Mr. Leib to Mr. Shurtleff? Do you recall having written Mr. Earl and what in substance you wrote him? A. I can't read this one.

Q. Here is one that maybe you can read.

A. I don't believe I ever wrote to Mr. Earl on that subject. I have no recollection of it if I did.

Q. You will note that in the telegram Mr. Leib makes the statement that "we", referring presumably to Blyth & Co., "have the two largest stockholdings on our side". Do you have any explanation to make of this statement?

A. Well, I think he was counting a good many chickens before they hatched. He no doubt knew of my sympathy to his cause. I don't know that I ever told him specifically that I was going to make any effort at all to assist him, but he no doubt knew and I probably did let him know at least by infer-

(Testimony of James B. Black.)

ence that I had recommended to Mr. Hockenbeamer that Blyth & Co. have the business. Now, who the other stockholder was I don't know. It might have been Standard Gas & Electric Company. [1255] They were the next largest stockholder at that time.

Q. Might that not have referred to Pacific Gas Lighting Company?

A. Pacific Lighting Corporation?

Q. Yes, Pacific Lighting Corporation.

A. They were not the next-to-the-largest stockholder at that time. It might have referred to them. He says here "Therefore, we have the two largest stockholders on our side, and also we have the right on our side".

Mr. Phleger: That ranks third after the two other stockholders!

A. (continuing) But the two largest stockholders at that time were the North American group and the Standard Gas & Electric Company.

By Miss Calkin:

Q. Did you discuss the handling of the $45,000,000 issue with any representative of Blyth & Co. after it was placed on the market? That is, the manner in which the issue was distributed and so forth?

A. I don't remember. It is quite possible.

Q. Mr. Black, I call your attention to what purports to be a copy of a letter of April 3, 1935 from Mr. Leib to Mr. Shurtleff in which he states that you were tremendously surprised that Blyth & Co.

(Testimony of James B. Black.)

did not head the business because you practically gave instructions to Mr. Hockenbeamer that you [1256] would like to have it this way.

A. Well, Mr. Leib is exuberant. I was not surprised at all because I knew that somewhere along the line that Mr. Hockenbeamer had made the decision to give the business to Lazard Freres.

Q. Would you say that that was a correct interpretation of your communication to Mr. Hockenbeamer on the subject of the leadership of the March, 1935 syndicate?

A. Well, if I wanted to do Blyth & Co. a disservice that would be the way to have done it.

Q. Did you give Mr. Hockenbeamer instructions? A. No, certainly not.

Q. Did you tell Mr. Leib that you had instructed Mr. Hockenbeamer to give his firm the leadership of the business?

A. I did not. I most certainly did not.

Q. Did you ever ask Mr. Hockenbeamer who was running the Applicant, he, Mr. Hockenbeamer, or Stanley Russell, as that letter, I believe, makes some statement to the effect?

A. I don't recall that I ever did. I am quite sure I didn't in the form that it was stated here because that isn't the way I ever talked to Mr. Hockenbeamer and I have never used statements of that kind in discussing matters with him.

Q. Did Mr. Hockenbeamer weaken his position with the North American Company by giving

(Testimony of James B. Black.)

Lazard Freres the leadership of the $45,000,000 issue? [1257]

A. I don't think so appreciably. I would not have done it that way and he knew it, but that didn't affect his relations with me in any way.

Q. Did you ever tell Mr. Leib that your mind was open as to who should head the next syndicate, which was after the March, 1935 issue?

A. Well, I don't recall any such conversation, but he might have asked me if I as a director had any objection to him continuing to persuade Mr. Hockenbeamer to put Blyth & Co. in charge of the second underwriting. And I most certainly would have told him that I had no objection, if he had asked me.

Q. Did you lead him to believe that you would participate in the selection of the next syndicate manager? A. I did not.

Q. Do you know whether or not my understanding is correct, that the next piece of Applicant's financing—that is, in June of 1935—a $30,000,000 issue, was headed on the West Coast by Blyth & Co. and on the East by Lazard Freres?

A. It is my recollection that it was headed by Lazard Freres all over the country but that Blyth had the management of it under Lazard in the territory west of the Mississippi. Now, that may not be an accurate statement, but it is my recollection of it.

(Testimony of James B. Black.)

Q. After the March issue did you again tell Mr. Hocken- [1258] beamer that you thought that Blyth & Co. would be a better house to head the Applicant's business?

A. I don't recall that I did.

Q. Do you recall having called Mr. Leib in the early part of June and asking him if his firm had obtained joint management of the June, 1935 issue?

A. I remember some time along in there talking with him. I was inquiring, I think, as to whether they were going ahead with the second issue and what the situation was with respect to the group.

Q. Do you recall whether or not at that conversation you told Mr. Leib that you had suggested to Mr. Hockenbeamer that Blyth & Co. and Lazard Freres have joint management in the country with equal participation in the management fee?

A. No, I don't recall that.

Q. Did you ever make such a suggestion to Mr. Hockenbeamer?

A. I might have made it at the time of the first underwriting.

Q. But your wishes in that respect were not followed? A. Oh, no.

Q. What were——

A. (interposing) May I amplify that a little? I am quite sure that at the time Mr. Hockenbeamer and I were discussing the leadership of the first underwriting group that he [1259] suggested alternatives to a single leadership. Perhaps I sug-

(Testimony of James B. Black.)

gested some, but whether I discussed with him a joint leadership or a divided leadership subsequent to the first issue, I don't recall.

Q. What were your activities concerning Applicant's financing from the date of the June issue to the next issue in September of 1935?

A. I don't recall any activities.

Q. Do you recall having had lunch with Mr. Leib about August 20, 1935 just before you went to California during which lunch you discussed Applicant's financing? A. No, I don't.

Q. I hand you what purports to be a photostatic copy of a letter dated August 20, 1935 from Mr. Leib to Mr. Blyth and will ask you if that refreshes your recollection?

A. I don't remember the conversation or the luncheon. I can't read this second page.

Q. Do you recall having told Mr. Leib at that time that you could not understand how Lazard Freres got the management when Blyth & Co. had so many friends in San Francisco, such as Messrs. Miller, Anderson and Chickering?

A. That's quite possible.

Q. Did you tell Mr. Leib on that occasion that neither you nor Mr. Fogarty ever told Mr. Hockenbeamer to do anything but only made suggestions, and that Mr. Hockenbeamer had always [1260] been amenable to suggestions?

A. I certainly did not. I told him probably the first part of that statement, but not the second.

(Testimony of James B. Black.)

Q. You mean that it is not true that Mr. Hockenbeamer had always been amenable to suggestions?

A. He had not. He made his own decisions.

Q. Do you recall seeing Mr. Blyth on several occasions when you were in California the latter part of August or the first part of September, 1935?

A. No. I don't recall seeing him, but I probably called on him. He was one of my acquaintances here whom I always called upon when I came to California, and I no doubt did call upon him.

Q. Will you refer to a letter in there dated September 14, 1935 from Mr. Blyth to Mr. Leib? Do you recall whether or not you discussed with Mr. Leib or Mr. Blyth in the latter part of August or the first part of September, 1935 the syndicate managership of the Applicant's future financing?

A. Well, I don't recall it.

Q. Did you have anything to do with the formation of the syndicate which purchased the $20,000,000 bond issue of September, 1935?

A. I did not.

Q. Did Mr. Hockenbeamer consult with you regarding the price and the spread on the issues sold in June and September [1261] of 1935?

A. Well, I don't recall specifically, but I presume he did. He didn't talk about spread, as I recall, after the first issue——

Q. (interposing) Mr. Black, to what extent——

A. (continuing) —or just prior to the second issue. I don't believe we discussed spread at all on

(Testimony of James B. Black.)

the last issue. This is a long time ago and there was a lot of conversation, and I don't remember all of it very accurately. He did make a practice of checking with me on price and I think that it would be safe to say that he did on all three issues.

Q. In connection with any of the 1935 issues did you carry on any negotiations with Stanley Russell?

A. None whatsoever.

Q. To what extent did you participate in any of the negotiations between the Applicant and the underwriters with respect to the 1935 issues?

A. I didn't participate at all. The negotiations were all conducted out here.

Q. And you were not present during those negotiations? A. None of them.

Q. Do you know whether any representatives of the North American Company participated in the negotiations respecting the 1935 bond issues?

A. No. I am quite sure they did not. [1262]

Q. Before you left New York after your election as president of the Applicant what, if any, discussions did you have with Mr. Fogarty or Mr. Williams regarding future financing by the Applicant and who should head it?

A. I had none whatsoever with either one.

Q. You were then well aware of the desire of Blyth & Co. to get the leadership of Applicant's business, were you not? A. Yes. Oh, yes.

Q. Did you ever request Mr. Fogarty or Mr.

(Testimony of James B. Black.)

Williams for their views on the desirability of having Blyth & Co. head the Applicant's financing?

A. I have no recollection of ever discussing it with Mr. Williams. I might have discussed it with Mr. Fogarty.

Q. Did you know before you left New York to become president of the Applicant what Mr. Fogarty's views were on who should head Applicant's financing?

A. I don't believe he ever expressed any views to me.

Q. Did any representative of the North American Company ever give you the impression that they were more favorable to Blyth & Co. than they were to Lazard Freres & Co. as respected the leadership of Applicant's financing?

A. They did not.

Q. What conversations, if any, did you have with Mr. Fogarty or Mr. Freeman or any representatives of the North [1263] American Company respecting the leadership of Applicant's financing prior to the March, 1936 issues?

A. I had none.

Q. Who formulated the plan of refinancing which was consummated in March, 1936?

A. That was formulated in my office.

Q. Did you confer with North American Company representatives regarding the plan?

A. I did not.

(Testimony of James B. Black.)

Q. What was the nature of your first communication with the North American people in regard to the first 1936 issue?

A. Well, I don't remember it specifically, but I am sure that I didn't talk with them until we had made the decision to proceed and that I was looking for information on price and their judgment on what the market was going to look like 30 or 60 days hence.

Q. You did talk to Mr. Fogarty to get his ideas on price? A. Oh, yes.

Q. What about the spread?

A. No, not on the spread.

Q. Who determined the spread on that issue?

A. I did.

Q. After you became president who first talked to you about the syndicate management of Applicant's next financing? [1264]

A. I think the first and only discussion that I had with anyone about it was a remark that Mr. Allen Chickering, one of our directors, made at luncheon one noon. Mr. Chickering had been an advocate of Blyth & Co. leading the business and he told me that he thought that it had been a mistake not to have given them the lead in 1935 and that he hoped that when the time came for doing any further financing that they would be chosen for the leadership. And that was, I think, some time in December, and only a few days—not to exceed two or three weeks in any event—after I had come

(Testimony of James B. Black.)

to San Francisco and I told him that I had a lot more troubles to straighten out before we got to that point and that I didn't want to even think about it.

Q. Did Mr. Chickering express dissatisfaction over the leadership of Lazard Freres & Co.?

A. Well, he expressed a genuine dissatisfaction with the situation as it existed in 1936. I don't know that it was because he thought less of Lazard Freres than he thought more of Blyth & Co.

The Examiner: You said the situation in " '36". Do you mean '35?

The Witness: In 1935. I beg your pardon.

By Miss Calkin:

Q. But he did indicate to you that he would like to see Blyth & Co. head the business? [1265]

A. He did, yes. And I don't believe I had any further conversation with anyone about it except perhaps Mr. Beckett until I made up my mind what I wanted to do, and then I discussed it with the members of the Executive Committee and, I think, perhaps with some of the members of the Board. And they approved heartily. Then I called Mr. Blyth in. Previously he had never mentioned the matter to me, and I called him down to my office and asked him if he was in a position to take the lead of the business. He said he was and would be very happy to do it. I told him to get busy with some suggestions as to the group; told him generally what I had in mind with respect to size and term

(Testimony of James B. Black.)

of the bond, the coupon; and asked him to have his people who were familiar with the preparation of registration statements get in touch with our people right away.

Q. But that was after you suggested the name of Blyth & Co. as leaders to the Board?

A. Yes.

Q. Was your mind made up as early as December, 1935, that the leadership of the next financing would not go to Lazard Freres & Co.?

A. No. I don't think I had that question in my mind at all. I had so many other things to think about, as I told Mr. Chickering, that I don't believe I would attempt to come to any decision on it. [1266]

Q. Do you recall having lunch with Mr. Blyth during the early part of 1936? A. No.

Q. I refer you to a letter dated January 4, 1936 from Mr. Blyth to Mr. Mitchell and call your attention to the last paragraph on the first page of that letter. Would you say that your mind, if you had such a luncheon, the luncheon that was then contemplated with Mr. Blyth, was or was not made up as of approximately that date as to whether or not Blyth & Co. should lead the next underwriting of the Applicant?

A. I am sure I can't say just what day it was made up—the decision was finally arrived at—but I think this would be a bit early.

Q. Is Mr. Chickering the only member of Ap-

(Testimony of James B. Black.)

plicant's Board that ever suggested to you that Blyth & Co. head the business?

A. Yes. My answer to the previous question would be confirmed by the fact that I did not tell Blyth at the time of this luncheon, if we had it, that he was to head the business because I remember distinctly calling him into my office when I told him, and it must have been subsequent to this date.

Q. Did any members of the Executive Committee or the Board express their disapproval over Blyth & Co. at the time that you did make it? [1267]

A. No. On the contrary, they approved heartily.

Miss Calkin: I think this is a good stopping point.

Off the record.

The Examiner: Off the record.

(Remarks outside the record.)

The Examiner: Mr. Troy, you heard the statement that was just made, did you not: That the cross examination of Miss Calkin will conclude in perhaps 30 minutes in the morning?

Mr. Troy: No, I didn't hear it.

The Examiner: If you have any questions that you desire to propound to Mr. Black will you be prepared to do so in the morning?

Mr. Troy: Yes, and I am going to try to get here at 9:00 o'clock to confer with Miss Calkin. She fixed that time.

The Examiner: Yes. We will recess until 10:00 o'clock.

(Testimony of James B. Black.)

(Whereupon at 4:20 o'clock p. m. an adjournment was taken to 10:00 o'clock a. m. on Tuesday, November 26, 1940.) [1268]

Proceedings

The Examiner: You may proceed when you are ready.

Whereupon—

JAMES B. BLACK

was produced as a witness for and on behalf of the Applicant and, having been previously duly sworn, testified further as follows:

Cross Examination
(Resumed)

By Miss Calkin:

Q. I believe you testified, Mr. Black, that no member of the Board, or of the Executive Committee, other than Mr. Chickering, requested you to let Blyth & Co. have the leadership of the syndicate which purchased the bonds issued by the Applicant in the spring of 1936?

A. That is correct. But I don't know that you would call Mr. Chickering's remarks as a request. They were more in the nature of an expression of his opinion.

Q. He has testified to the conversation he had with you?

(Testimony of James B. Black.)

A. Yes. But I took it as just an expression of opinion.

Q. I believe you testified that Mr. Blyth never requested you to handle the business?

A. No, he did not. I imagine that he was under some embarrassment from an ethical standpoint.

[1270]

Q. What about other representatives of that firm, did they approach you, that is, after you came to San Francisco? A. No.

Q. Just who did you talk to of the New York office of Blyth & Co. at different periods of time regarding Blyth & Co.'s desire to head the Pacific Gas and Electric Company business?

A. I don't believe I talked with anyone except Mr. Leib.

Q. You never talked to Mr. Mitchell about it?

A. No.

Q. Was Mr. Mitchell with Blyth & Co. when you left New York?

A. I think he came some time in 1935, but I wouldn't be sure of that.

Q. Now, did Mr. Williams ever talk to you or communicate with you in any manner regarding a conference which he had with Mr. Mitchell in the early part of January 1936? A. He never did.

Q. Did Mr. Williams ever express to you his opinion as to who should head the Applicant's financing? A. He did not.

Q. Have you ever discussed the leadership of

(Testimony of James B. Black.)

Applicant's financing from any standpoint with Mr. Williams?

A. I certainly have not since I was elected president. He may have known of my feeling that Blyth should have headed the business in 1936. I don't recall—— [1271]

Q. (interposing) You mean 1935?

A. Yes—I don't recall any specific conversation, but I presume it was generally known around the office there how I felt about it.

Q. But there was no understanding between you and Mr. Fogarty or Mr. Williams, when you left New York to become president of the Applicant, as to who should head any future financing by the Applicant, or who should be members of the syndicate?

A. No understanding on that or any other thing.

Q. Would you say that your only knowledge as to the desire on the part of Blyth & Co. to get the leadership of this business came from your conversations with Mr. Leib?

A. I would assume that all of the banking houses in the group, any one of them would want to head the business. Of course, I knew from the conversations with Mr. Leib that they wanted to head it.

Q. Did the representatives of any New York house, banking house, during the period you were in New York and before you came to the Coast as president of the Applicant, see you as frequently as Mr. Leib?

(Testimony of James B. Black.)

A. Yes, I think so. I didn't see Mr. Leib very often. With the exception of the period that he was trying to get Blyth the leadership of the business I saw very little of him.

Q. What individuals would you say were as active as [1272] the representatives of Blyth & Co. were?

A. None of them. But I did have requests from others for my assistance in convincing Mr. Hockenbeamer that their firm should be given either leadership or a very high position in the syndicate.

Q. But after the syndicate was formed in March of 1935 did the representatives of any of the houses continue to see you in an effort to get the leadership of the next piece of Applicant's financing?

A. I don't recall that they did.

Q. I may have asked you this yesterday, but did you ever discuss the change of leadership from Blyth & Co. to Lazard Freres & Co. with Mr. Fogarty before you had made up your mind on that change?

A. No. I didn't discuss it with anyone.

Q. Do you assume full responsibility for the change in the leadership, Mr. Blyth? A. I do.

Q. How was the list of underwriters for the March or April 1936 issue made up, that is, the syndicate membership?

A. That came out of conversations between Mr. Blyth and myself. I asked him for his recommendations, and I had some of my own ideas as to

(Testimony of James B. Black.)

changes in allocations, and I can't say just whether all of mine were adopted, or whether all of his were adopted. There was, as a matter of fact, very little [1273] difference between us as to the form that the group should take.

Q. Who originally suggested the name of Dillon Read & Co.?

A. I don't recall as to that. It came out of the conversation which I had with Mr. Blyth with respect to the desirability of having additional strength in the group, and several houses were mentioned. I imagine half a dozen were mentioned. Whether I mentioned Dillon Read & Co., or whether he did, or whether he mentioned Morgan Stanley & Co. or not, I don't recall. But it is quite obvious that in choosing a firm, or two or three to add to he group that those firms that weren't finally chosen would be considered by anyone who was considering the problem.

Q. Would you say the same was true with respect to the selection of Kuhn, Loeb & Co.?

A. Yes.

Q. It is a fact, is it not, Mr. Black, that Dillon Read & Co. have for a number of years headed a large number of the issues of the North American Company and its subsidiaries?

A. They have been very active in financing of North American properties. I don't recall just the proportion that they have handled. North American, I think, employs other banking groups.

(Testimony of James B. Black.)

Q. Have you not heard Dillon Read & Co. referred to [1274] as the banking house for the North American system?

A. Not around the North American offices. I have heard it outside.

Q. Were you acquainted with the fact that Harrison Williams and Clarence Dillon were close personal friends?

A. I knew they were friends, as I think Mr. Williams knows and is friendly with practically all the investment bankers and commercial bankers in New York.

Q. Did Mr. Williams suggest that the firm of Dillon Read & Co. be given a substantial participating in the $90,000,000 issue?

A. He did not.

Q. Did you discuss the inclusion of the firm of Dillon Read & Co. with any representatives of the North American Company? A. I did not.

Q. Who suggested that Lazard Freres & Co. have only fifth position in the $90,000,000 issue with a 6.67 percent participation?

A. Well, they were really in third position. There were three houses in the second position—Blyth headed it—and then Lazard shared the third position with, I think, one other house. I haven't those lists before me. But I can't say that I did or that Mr. Blyth did suggest just where they should be. It was the outcome of the result of cut and tries, [1275] suggestions that we both made during the

(Testimony of James B. Black.)

course of the conversation. He had several tentative setups and I had several, and we finally got together on the one that was finally adopted. Just where in the conversation the idea came to include any one of them any place I can't tell you because there were several conversations on it and several memorandums submitted by each of us.

Q. Who formulated the plan for the March or April 1936 financing? A. I did.

Q. Who carried on the negotiations with respect to price, spread, type of security to be issued and debenture provisions, and matters of that sort?

A. Entirely handled by Mr. Blyth and myself.

Q. Those were all handled in San Francisco?

A. In San Francisco; yes.

Q. To what extent did you communicate with the North American people in regard to this piece of financing?

A. Only with respect to price and factors that would relate to price.

Q. Did you talk to Mr. Russell regarding the change of leadership prior to the signing of the underwriters' agreement?

A. Yes. Mr. Russell came to my office in San Francisco and I had the very unpleasant task of telling him that I had [1276] decided to make the change.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 136, which purports to be a copy of a telegram

(Testimony of James B. Black.)

dated February 27, 1936, from yourself to Mr. Russell. Can you identify that document?

A. Yes; I can identify that.

Miss Calkin: We offer in evidence Commission's Exhibit No. 136.

The Examiner: It will be received in evidence and so marked.

(The copy of telegram referred to was marked Commission's Exhibit No. 136 and received in evidence.)

By Miss Calkin:

Q. Did you have the conference with Mr. Russell that you have just testified to subsequent to the date of that telegram or prior thereto?

A. It must have been prior thereto. I don't recall the exact date. He was in San Francisco shortly after the first of the year. This is dated February 27, and is addressed by me to New York City; so it must have been after he returned to New York.

Q. And the conversation referred to therein was a telephone conversation?

A. I presume so, because he was in New York and I was in San Francisco, and it refers to a conversation of "yesterday". [1277]

Q. I notice that H. M. Byllesby & Co. did not participate. Why was that house left out?

A. I didn't know they were left out.

Mr. Phleger: They were in for $4,000,000.

A. (continuing) They participated in all three, I think.

(Testimony of James B. Black.)

Mr. Gerdes: They were in all three of that year.

A. (continuing) I think you will find that all houses that participated in the 1935 underwriting were in the 1936 underwriting and, in addition, in connection with the $90,000,000 issue there were three New York houses added on that issue alone and, in addition, for all three of the 1936 issues I added the six San Francisco houses.

By Miss Calkin:

Q. Did any representative of the North American Company act for the Applicant in any of the negotiations connected with the $90,000,000 issue?

A. Not at all.

Q. Was there any understanding between the Applicant and the underwriting syndicate for the $90,000,000 issue as to whether or not Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. would participate in future financing of the Applicant?

A. Well, I don't know what agreements might have been had between the underwriters, but I know there was a very [1278] definite understanding between Mr. Blyth and myself that they would not participate.

Q. In other words, their position in the March or April 1936 issue was not to be taken as establishing a precedent?

A. That is correct; and they were so informed at the time they were invited into the syndicate, I am quite certain, because I was careful to make it clear

(Testimony of James B. Black.)

to Mr. Blyth that I could see no reason why we should include them in any subsequent financing as then contemplated. It is possible that if we had a very large issue that we might give consideration to including one or all of them again.

Q. I believe those houses were not included in the two subsequent issues of the Applicant in 1936, that is, a $30,000,000 issue in May and a $35,000,000 issue in October? A. That is correct.

Q. And why were they not included?

A. Because the issues were not large enough to justify the group.

Q. Who determined that the Applicant should issue $30,000,000 principal amount of bonds in May 1936 and $35,000,000 in October of that year?

A. I did; that is, I recommended it to the Board and the Board finally approved it.

Q. Did you confer with any representatives of the [1279] North American Company about price, spread and other terms relative to the issuance of those securities? A. Price only.

Q. Mr. Black, I hand you what has been marked for purposes of identification Commission's Exhibit No. 137, which purports to be a copy of a letter dated May 5, 1936, from yourself to Mr. Fogarty, and I will ask you if you can identify that document? A. Yes; I can identify it.

Miss Calkin: We offer in evidence Commission's Exhibit No. 137.

(Testimony of James B. Black.)

The Examiner: It will be received and so marked.

(The copy of letter referred to was marked Commission's Exhibit No. 137 and received in evidence.)

By Miss Calkin:

Q. Who determined the leadership and membership of the syndicates which purchased the $30,000,000 and the $35,000,000 issues of 1936?

A. I did, in conference with Mr. Blyth. They were substantially the same as the $90,000,000 issue with the exception of the three New York houses that were brought in for that issue specifically.

Q. Did all of the directors express complete satisfaction with Blyth & Co.'s management of the financing of the Applicant in 1936? [1280]

A. I can't say that they all individually expressed it, but there certainly was no criticism of it, and they all seemed to be very much pleased with it.

Q. Did any representatives of the North American Company protest over the exclusion of Dillon Read & Co. from the last two syndicates formed in 1936? A. Not to me.

Q. Did Dillon Read & Co. make any request for participation in these two issues?

A. I don't believe they made any request to participate in any of them; any of the 1936 issues.

Q. Did you consult with Messrs. Fogarty, Freeman or Williams regarding the advisability of the

(Testimony of James B. Black.)

private placement of $15,000,000 principal amount of bonds sold to the five insurance companies and a bank in February of 1938? A. No.

Q. When were they first advised of this piece of financing?

A. I don't recall specifically, but I certainly talked with Mr. Fogarty to get his advice as to the discount that he thought we would have to give the insurance companies and the bank that participated in the purchasing group below the market price for the bonds in order to interest them.

Q. Who determined that this financing should be done by a private placement? [1281]

A. I recommended it to the Board and the Board approved it, that is, the Board or the Executive Committee, or perhaps both.

Q. I believe the previous evidence shows that all of the Applicant's outstanding bonds are secured by the same trust indenture, is that correct?

A. Yes. We have assumed something just under $9,000,000 of San Joaquin Light & Power Corporation bonds, which are a separate indenture, but with that exception all of our bonds are refunding mortgage bonds.

Q. Who is the trustee under that indenture?

A. The San Francisco trustee is the American Trust Company and the New York trustee is the City Bank-Farmers.

Q. When were those trustees selected?

A. I think those two institutions, or their prede-

(Testimony of James B. Black.)

cessors, have been trustees since the mortgage was drawn.

Q. That is a 1920 indenture?

A. Yes; about 20 years.

Q. So during your presidency there has never been up for determination who should serve as trustee for any of the Applicant's issues?

A. No.

Q. Have you conferred with any North American representatives regarding future refunding or financing of the Applicant? [1282] A. No.

Q. Do you look to the North American Company for the formulation of Applicant's financial policy?

A. No, I do not look to the North American Company, except what constructive suggestions they might wish to give me. By North American Company I again refer to the directors of the Pacific Gas and Electric Company who are officers of the North American Company.

Q. During your presidency has the North American Company generally been advised of proposed financial matters before they have been acted upon by the Board? A. They have not.

Q. In connection with the major refunding programs, those matters are discussed informally before they are approved by the Board, are they not?

A. Oh, yes. We are working on those plans more or less continuously and we may be approaching a period when we can do another one, and we have

(Testimony of James B. Black.)

had several informal discussions in the Executive Committee with respect to it.

Q. To what extent has North American been advised of those informal discussions?

A. They haven't been advised at all.

Q. Would it be fair to say that North American is not consulted with reference to financing projects of the Applicant until they have reached a fairly definite stage? [1283]

A. It would be accurate to say that they are not consulted in the formulating of any of our financial plans.

Q. And you have never requested Mr. Fogarty's advice in regard to any matters pertaining to Applicant's financing, other than the price of the issues?

A. The price and, well, collateral factors which might have an effect on price, such as the term or the coupon, or something of that kind.

Q. Have you in all instances followed Mr. Fogarty's advice on those matters?

A. I don't believe his ideas have been very much different than mine. I can't say that I followed his advice at all.

Miss Calkin: I think that is all.

Mr. Phleger: I want to ask a few questions.

Redirect Examination

By Mr. Phleger:

Q. You have been asked in various forms and in various ways about communications had by you

(Testimony of James B. Black.)

with officers of the North American who are directors of the P. G. & E. in connection with financing, and two or three times you have been asked whether or not you sought the advice of Mr. Fogarty. Would it be fair to say what you were seeking was not the advice of Mr. Fogarty so much as information as to what was the existing status with respect to interest rates, markets, and [1284] so forth in New York?

A. And what might be the status in the future in his judgment. My use of the word "advice" would be almost synonymous with "information".

Q. Did you know Mr. George Leib before you went to New York?

A. Slightly. He was a business acquaintance. I had known him in San Francisco. I had never had any business with him.

Q. But you had known him in San Francisco before you went to New York? A. Yes.

Q. And before he went on to New York?

A. Yes. He came to New York after I did.

Q. Mr. Black, did the officers of the North American Company, who are directors of the Pacific Gas and Electric Company, receive any more information than they would receive if they attended meetings of the Board of Directors and of the Executive Committee?

A. No; they receive less.

Q. I take it that "less" means that they don't have knowledge of the intimate discussions that go on when those bodies actually meet?

(Testimony of James B. Black.)

A. That is correct. My feeling of obligation to those directors is that I should keep them informed on what, in my [1285] judgment, are important matters, and I have no feeling that it is necessary for me to keep them informed on other matters, detail of the operations which are discussed in the Executive Committee and Board meetings from time to time.

Q. In other words, is it fair to say that your attitude is that you try and keep them, by reports or otherwise, informed to the same extent, consideration being had as to distance and so forth, as they would have had had they actually attended the meetings of the Board?

A. Well, only as to important matters. I don't attempt to go into great detail with them.

Q. But what I am referring to, do they get copies of minutes of the meetings, and do they get the reports submitted to those meetings?

A. Yes.

Q. If there is anything else of vital importance that comes before the meetings you see that they are advised?

A. I try to; and if there is some matter developing on the outside, for instance, involving litigation, or matters in relation to rates involving large rate revisions, or relations with regulatory bodies, I try to make it a point of telling them about it, or writing them about it—usually telling them—and I feel that if I give them complete information through

(Testimony of James B. Black.)

reports, or verbally, on all important matters then they are in a position to appear out here and [1286] express their opinions on matters, if they care to, and that I have discharged my obligation to them.

Q. In effect, the officers of the North American Company who are directors of the Pacific Gas and Electric Company do not receive any more, if as much, information as received by the numerous members of your own Executive Committee?

A. That is correct.

Q. Do the officers of the North American who are representatives of the Pacific Gas and Electric Company receive any more information regarding Pacific Gas and Electric Company affairs since you became president than they received before you became president?

A. I should say that they receive just about the same information on important matters now that they received over the past ten years.

Q. And do the officers of the North American Company who are directors of the P. G. & E. receive any more or less information in respect to Pacific Gas and Electric Company affairs than they received during the time that Mr. Earl was a director and a member of the Executive Committee?

A. Not on important matters.

Q. After North American sold its interests in the Great Western and San Joaquin to the Pacific Gas and Electric Company in 1930, did it immediately cease to perform all of the [1287] various

(Testimony of James B. Black.)

supervisory and advisory functions and services which it had previously performed for the Great Western and San Joaquin, including financial, rate matters, accounting, Station Advisory Committee, engineering, purchasing, taxation, insurance, sales promotion, fiscal service and budgetary advice?

A. I did. [1288]

Mr. Phleger: Miss Calkin, for the record, have you or other representatives of the Securities and Exchange Commission been given full access to the files of the North American Company and the Pacific Gas and Electric Company with respect to matters bearing upon the issues in this proceeding?

Miss Calkin: So far as my personal investigation is concerned I was only in the office of the North American Company, and I requested all files in connection with the correspondence and any type of communication between the Applicant and the North American Company, and so far as I know they gave me all the files.

I did not make the investigation out here, but I understand the same request was made here and as far as I know the request was complied with.

Mr. Phleger: And the material resulting from the inquiry at the offices of the P. G. & E. were made available to you, were they not?

Miss Calkin: That is correct.

Mr. Phleger: Is it fair to say that all of the results of those two investigations which you felt

(Testimony of James B. Black.)

were material to the issues in this proceeding have been introduced in evidence?

Miss Calkin: That is correct.

Mr. Phleger: That is all. [1289]

Miss Calkin: I have a few further questions.

Recross Examination

By Miss Calkin:

Q. Mr. Black, would you expect the North American Company to become more active in the affairs of the Applicant than it has been in the past if the Applicant got into unforeseen difficulties?

A. I doubt it. I think that any difficulties that the Company might get into would be related to purely local matters, and I don't believe that the activity of our New York directors, and their judgment, would be very useful in matters of that kind, and I think they would so recognize it.

Q. Hasn't Mr. Fogarty ever told you in substance that one reason that neither he or Mr. Freeman attended Board meetings was because the Applicant was progressing as well as they could expect under the circumstances?

A. No. He has never told me anything about the reasons why he doesn't attend Board meetings.

Q. Has he ever indicated to you what the activity of himself and Mr. Freeman, or of the North American Company, might be in the event of a downward trend in the earnings of the Applicant?

A. He has not. [1290]

(Testimony of James B. Black.)

Q. Is it a correct statement to say that the North American Company, from 1930 until the death of Mr. Earl, paid him the salary which you testified to on direct examination to keep the North American Company informed as to the business of the Applicant? A. That is correct.

Mr. Phleger: On that subject I believe you also testified that that was largely in the nature of a pension.

The Witness: I don't think I quite used the word.

The Examiner: I think one of the other witnesses used that word.

The Witness: But his employment grew out of a situation which developed as a result of the sale of properties. He has been employed by the Great Western Power Company since its inception, and the last six years as president, and there seemed to be no place for him in the Pacific Gas and Electric Company organization, and the North American people, being new in the Pacific Gas and Electric Company situation, felt justified in employing him at least for a few years for the purpose of keeping them informed with respect to considerable detail which they might not otherwise get. The value of that detail might be subject to some question.

By Miss Calkin:

Q. Do you know whether or not since Mr. Earl's death, the North American Company has paid anyone, either employees [1291] of the Applicant or

(Testimony of James B. Black.)

anyone else, to furnish it information regarding the Applicant? A. Not to my knowledge.

Q. Mr. Black, to what extent have you discussed the application which is the basis for this hearing with representatives of the North American Company?

A. Well, the application was filed in December of 1935 and I don't believe that there was any discussion with the North American Company organization about it, except perhaps with respect to obtaining the necessary information for preparing the application. As a matter of fact, the application was pretty well prepared before I came out here.

Q. Was it prepared in the offices of the——

A. (interposing) Of the Pacific Gas and Electric Company; yes.

Q. What discussions have you had with North American representatives regarding this hearing?

A. I don't recall any.

Q. You haven't talked with Mr. Fogarty over the telephone regarding who the witnesses would be in the proceeding? A. Oh, no.

Q. Or on any other matters? [1292]

A. I think the last time I talked with Mr. Fogarty was in July and, as I recall, my purpose in calling him was to acquaint him with the status of our negotiations in the San Francisco situation growing out of this Hetch Hetchy litigation. I don't know when I have talked to Mr. Freeman over the telephone. It has been so long I have forgotten.

(Testimony of James B. Black.)

Q. Have you had any correspondence with Mr. Fogarty regarding this proceeding?

A. No; nor with Mr. Freeman.

Q. Did you recommend men to fill the vacancies on Applicant's Board which have risen since you were president of the Applicant without any contacts with Mr. Fogarty or Mr. Freeman?

A. I did.

Q. On direct examination I believe you testified that you would oppose any attempt on the part of the North American Company to control or exercise a controlling influence over the management or policies of the Applicant. Why would you oppose such an attempt?

A. I think it would be very detrimental to the company, Pacific Gas and Electric Company, if there was any such attempt made, and certainly it would be detrimental if it was successful, which I don't for a moment believe that it would be. I think the reason that I gave at that time covered [1293] the matter; that is, that this is known as the local company, that there is a good deal of local pride in it, and if it became known that it was a company controlled by outside interests, and particularly by a New York holding company, I am sure its position in public esteem would be weakened, and I am sure it would be subject to some political criticism, and they might or might not be serious, but at least they would be harmful; and I think that any attempt to interfere in the operations of the property by

(Testimony of James B. Black.)

anyone who was not here constantly on top of the job would result in inefficiency and loss of morale and would have a generally bad effect.

Q. Mr. Black, do you feel that in your position as president of the Applicant you are in a position to deal at arm's length with the firm of Blyth & Co.?

A. I am in a position to deal at arm's length with any individual or any firm.

Miss Calkin: That is all.

Mr. Phleger: That is all.

The Examiner: Miss Calkin, have you conferred with Mr. Troy with respect to his participation?

Miss Calkin: Yes. I talked to him about it. He has some questions, I think, and he might as well ask them.

The Examiner: Mr. Troy, you have been following these proceedings this morning as you have in the past? [1294]

Mr. Troy: Yes.

The Examiner: The examination of Mr. Black is now concluded, do you have any questions that you desire to propound to Mr. Black?

Mr. Troy: I haven't been able to hear the questions or the answers. I am quite deaf. I know Mr. Black will pardon me if I ask him to raise his voice so I can hear him in replying. I didn't hear any question or answer.

The Examiner: You have discussed the subject of this proceeding with Miss Calkin, I believe?

(Testimony of James B. Black.)

Mr. Troy: Yes.

The Examiner: You understand what the issues are that are involved here?

Mr. Troy: Yes—I think I do. I might be mistaken.

The Examiner: Proceed with your questions.

Mr. Troy: I think that, to begin with, I should congratulate Mr. Black on the attorneys that he has. They are very excellent gentlemen, able and efficient.

As far as I can see, excepting in your case and except in cross examination, they have done most of the testifying here. All the witnesses had to do was to say "yes" or "no" as a result.

Of course, I am not a lawyer, and I always thought that a proper method of testifying was for the witness to do the testifying. This is the first time that—no, it is not [1295] the first time—I remember in the other case of the Pacific Gas and Electric Company before the Railroad Commission, the gas case in 1933 and 1934, that Attorney Olney did most of the testifying in his questioning of the witnesses.

Cross Examination

By Mr. Troy:

Q. Mr. Black, Mr. Foote in his testimony stated that yourself and the other directors who were the proxies, received the proxies of most of the stockholders, but a few of the larger stockholders attended annual meetings in person, is that correct?

A. I think not.

(Testimony of James B. Black.)

Q. How? A. No.

Q. In what respect is it incorrect? That is, I mean, Mr. Foote's statement you say is not correct?

A. No. Your statement is not correct.

Q. Mine is not correct?

A. We sent out proxy notices to all of our stockholders.

Q. Yes.

A. During the recent years there have been, I should say, an average of 64 to 65 per cent of our stock come in with proxies.

Q. Yes. [1296]

A. And we have at our stockholders' meeting, I should say, over——

Q. (interposing) What?

A. (continuing) We have at our stockholders' meeting, I should say, over 100 stockholders usually and they are almost entirely small stockholders.

Q. Small stockholders. A. Yes.

Q. Mr. Foote said just the other way.

A. I think not.

Mr. Troy: If you will look up the transcript you will find it.

The Examiner: The record will show what was said, Mr. Troy.

Mr. Troy: The report—this goes as to the control of the P. G. & E. by the North American Company.

The Examiner: I understand.

Mr. Troy: It was always recognized that a concern, to control a company, it does not have to have

(Testimony of James B. Black.)

the majority of the stock. That fact was recognized in connection with the Southern Pacific, that is, that 25 per cent of the stock was sufficient to control, and much less.

Mr. Phleger: Are you arguing this case or are you introducing evidence?

Mr. Troy: I am just following your good example. You [1297] are such an experienced and able lawyer that I would like to follow your example.

Mr. Phleger: I think you are not going to be able to do it.

Mr. Troy: I have had no experience, and I don't know anything about it.

Mr. Phleger: I suggest——

The Examiner: I understood that you at one time were an attorney, were you not?

Mr. Troy: No.

The Examiner: I was misinformed.

Mr. Troy: I have been writing chiefly on public ownership, in favor of public ownership, and criticising public utility corporations and economic questions and tax questions.

The Examiner: All right.

Mr. Troy: As I have said before, I collected a lot of data on those subjects. I have my room full of it.

The Examiner: Go ahead with your questioning.

Mr. Troy: How?

The Examiner: Proceed with your questioning.

By Mr. Troy:

Q. Now, this account of the twenty largest stock-

(Testimony of James B. Black.)

holders in your report for the year ending December 31, 1939, shows that all of them, except the Pacific Lighting [1298] Corporation, are foreign corporations and persons, isn't that correct?

Mr. Phleger: Will you read the question?

(The question referred to was read by the reporter as above recorded.)

Miss Calkin: I think the record should show that the report he refers to is the report of the company to the Railroad Commission of California.

A. The report gives the address of the security holder. There is no information here as to where the corporations were incorporated or domiciled.

By Mr. Troy:

Q. You know those corporations, don't you, as president of the company?

A. I know some of them.

Q. Do you know they are foreign corporations?

A. I don't know that any of them are incorporated in California, except the Pacific Lighting Corporation.

Q. So the others are all foreign corporations?

A. I don't know.

Q. Did they send you their proxy, or did they give it through the North American Company?

A. All of the proxies come to the Pacific Gas.

Q. And do you know what interest the North American Company has in any of these corporations? [1299]

A. I think Noxid & Company is a nominee of

(Testimony of James B. Black.)

the North American Utilities Securities Company. They own 56,900 shares and, as far as I know, the North American Company has no interest in any other companies.

Q. It has no stock in the Standard Gas & Electric Company? A. None that I know of.

Q. Or the Sun Life Assurance Company of Canada? A. None that I know of.

Q. Or the American Superpower Corporation and New England Trust Company?

A. Same answer.

Q. And the American Cities Power & Light Corporation? A. Same answer.

Q. And, of course, the G. E. Employees. The Illuminating & Power Securities Corporation, do they have any stock in that?

A. Not that I know of.

Q. But these are eastern corporations—the Travelers Insurance Company, has it any stock in that?

A. None that I know of.

Q. And these twenty largest stockholders have a total of 3,182,000, and at the meeting the total vote cast—you say there are how many shares—11,632,000 is the total number of votes or shares of stock of the company? [1300]

A. That is correct.

Q. And the total vote cast was 7,551,558 and by proxy it was 7,539,394, so it was a fact that only about a little over 12,000 votes were cast directly by the stockholders? A. That is correct.

(Testimony of James B. Black.)

Q. So Mr.—your treasurer's statement was incorrect?

A. I think your statement is incorrect.

Q. You look up the transcript.

The Examiner: Someone will.

By Mr. Troy:

Q. This (indicating) is the 1938 report that you filed with the Railroad Commission, the Pacific Gas and Electric Company, and it likewise gives the number of shares. Now, the North American Company had 2,002,570 shares, all common stock, and at the annual meeting there was 7,420,000 votes cast. At both those meetings it was approximately the same. The twenty largest stockholders very easily controlled the Pacific Gas and Electric Company.

Mr. Phleger: I object to the question, if it is a question.

The Examiner: There is an objection to your question. It has not yet been ruled on.

Mr. Troy: I didn't hear it. Throw a paper or a book [1301] at me.

Mr. Phleger: Well, counsel has added up the number of shares held by the twenty largest stockholders and has attempted to relate it to the number of votes cast at the 1938 annual meeting. I see no relation between the two, unless it is shown that all of those stockholders were present at that meeting. If he wants to ask whether or not he believes that the twenty largest shareholders can control the

(Testimony of James B. Black.)

company, that is one thing; but I don't think his question is framed——

The Examiner: I think his question is likewise objectionable as calling for a conclusion.

Mr. Troy: Pardon?

The Examiner: I think your question is objectionable on the grounds stated, and possibly because it also calls for a conclusion.

Do you expect an answer to it from Mr. Black?

Mr. Troy: Yes.

The Examiner: Or is it just an assertion on your part?

Mr. Troy: I want an answer.

The Examiner: Will you reframe your question, please?

Mr. Troy: Would the reporter please read it?

(The question or statement referred to was read by the reporter as above recorded.)

Mr. Troy: Approximately one-half of the shares voted [1302] at the meeting.

The Examiner : That is your conclusion.

The objection to your question has been sustained.

Mr. Troy: It seems to be a self-evident fact.

The Examiner: That is your opinion, isn't it?

Mr. Troy: Well, it is self-evident.

I am asking Mr. Black if they didn't control that vote, that meeting.

The Examiner: You have changed the question from did they control that meeting to is it possible that they could have, is that right?

(Testimony of James B. Black.)

Mr. Troy: All right, if you wish.

The Examiner: All right, Mr. Black.

The Witness: I am not sure what the question is. Is it, did they control the meeting?

The Examiner: Is it possible that they could. He changed his question to read is it possible for the twenty largest stockholders to control the meeting if all were present and voting in person or by proxy.

Mr. Phleger: It just doesn't make sense, because the testimony shows that with the exception of 20,000 votes that were present in person, all of the stockholders, other stockholders, were present by proxy, and the proxy ran to Mr. Black, Mr. Downing and Mr. Foote.

The Examiner: It is apparent it is a hypothetical [1303] question, because there is no testimony here, nor has he shown facts to show whether or not, or which of the stockholders did vote. The record shows, I don't know what 1938 shows, but for 1939 there was about 65 per cent attendance. Now, it is possible that some of those first twenty largest stockholders were not represented in that 65 per cent, so it is purely a hypothetical question.

Mr. Phleger: It further is meaningless because the 66 per cent who were present, with the exception of 20,000 shares, were represented by Mr. Black, Mr. Downing and Mr. Foote. So how could those who were present in the person of the executives of the company control the meeting?

The Witness: They couldn't control it anyhow,

(Testimony of James B. Black.)

because there were 7400 odd shares voted, and the first twenty largest stockholders only have 40 per cent of that. It is mathematically impossible.

By Mr. Troy:

Q. As I said before, it has always been recognized that it doesn't require a majority to control.

A. It does in a meeting.

Q. That is sufficient on that. No use taking up your time.

The Examiner: Go ahead with your next question.

Mr. Troy: What?

The Examiner: Go ahead with your next question.

[1304]

By Mr. Troy:

Q. Now, Mr. Black, in the matter of your salary, $75,000, what salary were you getting from the North American Company before you became an officer of the Pacific Gas and Electric Company?

Mr. Phleger: Mr. Examiner, I am going to object to questions of this character.

Mr. Troy: I can't hear.

Mr. Phleger: You will know when I talk I am making an objection.

Mr. Troy: Yes. What is your objection?

Mr. Phleger: That this has nothing whatsoever to do with the issues which are presented by this proceeding.

Mr. Troy: It has a great deal to do with it.

The Securities and Exchange Commission, in the Union Electric Company of St. Louis—that is also

(Testimony of James B. Black.)

controlled by the North American Company—discovered that there were big salaries paid, and there was what the Commision called a kick-back, that is, money, those salaries were not to be appropriated solely by the party to whom they were paid, but out of them was taken money which was put into a fund for political purposes and which was secretly spent for politics.

I want to find out if the same thing is being done here in the Pacific Gas and Electric Company.

[1305]

The Examiner: Will you ask that question, then, if that is what you want to find out?

Mr. Troy: I would like to ask the reason, Mr. Chairman.

By Mr. Troy:

Q. What was your salary when you first became an officer of the Pacific Gas and Electric Company, Mr. Black?

Mr. Phleger: I object to that too, because it is merely a continuation of his former question. I think the Examiner is quite right. If his object is, as he stated, he should ask the question.

The Examiner: Unless you have some necessary preliminary question, if you will put the question that you desire to have answered, rather than reading from statistics or arguing, I think you will get the answer.

Your question is, has any part of his salary been kicked-back, as you have expressed it.

(Testimony of James B. Black.)

Mr. Troy: First, I want to find out the reason why it was made that. Also, at the same time the salary of Mr. Downing was raised to $40,000; the salary of Mr. Coghlan, who is here, was, he was getting $19,000 prior to that time, and his salary was raised to $25,000.

I think there are quite a number of these others—the large salaries were raised at the time Mr. Black's was raised. I would like to find out the reason for the [1306] increase in all those salaries.

The Examiner: You have read those figures from a schedule filed with the Railroad Commission, is that correct?

Mr. Troy: Yes.

The Examiner: Do you want to read all those raises in there, or just the ones you have mentioned?

Mr. Troy: Those I mentioned, I feel certain, have been raised, as I stated.

As to the others, I am not certain. As to Mr. Foote, I haven't got the previous report of the Commission, the report to the Railroad Commission. So I can't tell you. But Mr. Foote is given here as vice-president with a salary of $21,600.

By Mr. Troy:

Q. Was that an increase, Mr. Black?

A. There have been no increases in salaries paid officers since I became president, with the exception of that paid Mr. Coghlan and my own, except those increases which restored the salaries of officers to

(Testimony of James B. Black.)

the levels that they were paid prior to the depression.

The Examiner: Did you get that answer?

Mr. Troy: Yes.

By Mr. Troy:

Q. Was Mr. Downing's salary increased at the same time yours was increased? [1307]

A. No.

Q. Was it increased at any time?

A. It was increased before; it was restored to the level that he was getting prior to the depression. Those officers' salaries were reduced during the depression.

Q. What do you mean by "level", Mr. Black?

A. The same amount.

Q. Same amount.

A. I think I am correct in that, from memory.

Q. That can be easily ascertained.

A. I know Mr. Coghlan's salary was increased above the previous level, but the others, I am quite sure, with the exception of my own, were restored to the level, or to the amounts the officers were getting prior to the depression. My salary was not increased over the original amount at which I was employed for sometime after the other officers' salaries were restored.

Mr. Phleger: Mr. Black, your present salary, how does that compare with Mr. Hockenbeamer's salary?

The Witness: It is the same that Mr. Hocken-

(Testimony of James B. Black.)

beamer received prior to the time when he took a reduction during the depression; but it is exactly the same otherwise.

By Mr. Troy:

Q. Your present salary? A. Correct. [1308]

Q. Wasn't Mr. Hockenbeamer's salary as shown in the report on Special Order 77 (a) at $50,000 a year? A. For what year?

Q. Many years past up to the time he died.

A. No. Mr. Hockenbeamer received the same salary that I am receiving prior to the depression, and he took a reduction during the depression. I don't recall the amount. It is probably in the order of 10 per cent.

Q. That is, you would say he got $75,000 in 1928 and 1929?

A. No. I think that that was in 1930. I don't know the exact date when it was raised.

Q. You use that $75,000 for your own personal purposes? A. Entirely.

Q. Do you pay any money out of your own funds to aid any person seeking public office, or does anybody else use any of your money for that purpose?

Mr. Phleger: I object to that question, Mr. Examiner. I think that that has nothing whatever to do with the issues here.

Mr. Troy: What is the objection?

Mr. Phleger: I think if he wants to question as to whether or not any portion of his salary is paid to him not as his own personal salary, but to

(Testimony of James B. Black.)

be used for the benefit [1309] of the corporation and under its direction, that might be material; but certainly not what he does with his own salary.

The Examiner: I think that is right.

Mr. Troy: Mr. Black himself stated that in his visits with Mr. Hockenbeamer, among other things, he discussed politics.

The Examiner: Yes.

Mr. Troy: This matter that I am—the question now relates to politics.

The Examiner: That is right. Mr. Phleger has objected to it upon the ground that Mr. Black has a right to do whatever he wants with his money that is paid for personal services.

If you want to frame the question to ask Mr. Black whether or not he receives the money with any restrictions attached to it, or instructions that a portion of it should be paid out for political purposes, that question may be propounded.

Do you want to accept that change to your question?

Mr. Troy: Mr. Chairman, it seems to me—of course, I believe——

The Examiner: Let's consider you asked that question.

Mr. Troy: All right. A. Not a dollar.

Mr. Troy: That is what I expected we would get; the [1310] same character of an answer that all the directors and others who appeared here gave as to the influence of the North American

(Testimony of James B. Black.)

Company in the affairs of the Pacific Gas and Electric Company.

By Mr. Troy:

Q. Mr. Black, can you give the figures of gross assets of the Pacific Gas and Electric Company at the present time? They are probably in the 1939 report. A. About $800,000,000.

Q. About. Can you give the figures of the net amount of money received by the company from the sale of stocks and bonds, that is, the gross after deducting the refunding, and deducting expenses both of the company and brokers, and the others?

A. I haven't those figures in mind; no.

Mr. Phleger: I think there is already in evidence in the form of an exhibit gross and net proceeds of all security sales for at least the last ten years.

Mr. Troy: Does it also indicate what ones were retired later by refunding?

Mr. Phleger: Yes.

Mr. Troy: If I had access to that I could get it.

Now, there undoubtedly was a deficiency in the amount of stock and bonds sold. It was testified, I believe, that a great deal of stock was sold below par, was it not? [1311]

Mr. Phleger: There is some testimony that in 1914 some of the stock was sold at less than $100 a share, which was its par.

Mr. Troy: What?

Mr. Phleger: —less than $100 a share, which was its par.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Mr. Black, Mr. Hodges here, I believe testified that after the earthquake and fire there was an assessment levied on the common stock, and all of the common stockholders refused to pay the assessment, and their stock was forfeited. Now, afterwards the company sold $30,000,000 of stock, either that stock or other, and what price did it get for it?

A. I don't know.

Q. Would you mind if—could you have Mr. Hodges here to give the same testimony that he gave in the gas case on that matter, or would you want me to state it?

A. I think you had better ask counsel what they want to do about it, or the Examiner.

Mr. Troy: Would it be proper, counsel, for me to state that Mr. Hodges testified in the gas case——

Mr. Phleger (interposing): We don't care what Mr. Hodges testified in the gas case. If you have any question on any pertinent matter, or rather, any information that [1312] you desire to submit, I suppose you can introduce it.

Q. Would you mind, then, getting the information from Mr. Hodges if he did not testify in the gas case of 1933-34 that the company sold $30,000,000 of stock to common stockholders for $500,000?

Mr. Phleger: You mean the stock that was subsequently bought in?

Mr. Troy: I can't hear you.

Mr. Phleger: The stock which was subsequently

(Testimony of James B. Black.)

bought in for failure to pay assessment?

Mr. Troy: I don't know what it was. I don't remember that detail.

Mr. Phleger: Yes.

Mr. Troy: That was his testimony.

Mr. Phleger: Well, I suggest, Mr. Examiner, that it has no pertinency at all in this proceeding.

Mr. Troy: Oh, it certainly has.

The Examiner: Mr. Troy, what is your opinion of the relation of this fact that you are reciting to these proceedings?

Mr. Troy: Well,——

The Examiner (interposing): As I understand it, the company acquired some of its outstanding shares by declaring an assessment, and upon non-payment of the assessment the shares were forfeited to the company;——

Mr. Troy (interposing): Yes. [1313]

The Examiner (continuing):—that it then turned around and resold those shares for $500,000.

Mr. Troy: Well, whether it was the same stock or not I don't know.

The Examiner: What do you propose to prove by that?

Mr. Troy: Well, I will ask Mr. Black this:

Q. Didn't the company in 1928 and other years afterwards sell large blocks of stock at par to the common stockholders—the $25 par stock—for $30 and more when it was selling on the stock market for $30 and more per share?

(Testimony of James B. Black.)

A. There were several offerings of rights made by the company, and all but one of them, I think, were offerings at par. That offering was at $55. Now, the exact dates or amounts of those offerings I don't recall.

Q. An offering at 55?

A. There was one at 55.

Q. And at that time what was the market?

A. I don't know.

Q. About 80, wasn't it?

A. I don't know.

Mr. Phleger: Those sales were pursuant to the order of the Railroad Commission of the State of California, were they not?

The Witness: In all instances, yes.

Mr. Troy: What? [1314]

Mr. Phleger: Those sales were pursuant to the order and authorization of the Railroad Commission of the State of California.

Mr. Troy: They were pursuant to the application of the company, and I was present at the hearing before the Examiner and I showed them that the company would lose $7,000,000 in the first proceeding, and afterwards Mr. Cutten, the attorney of the company, picked a quarrel with me and tried to strike me with a chair. He slung it on his shoulder and said he would brain me.

The Examiner: Mr. Troy, have you any further questions?

Mr. Troy: Yes.

(Testimony of James B. Black.)

The Examiner: All right, go ahead. Or do you want a recess at this time?

Mr. Troy: I beg your pardon?

The Examiner: Or do you want a recess at this time?

Mr. Troy: Suit yourself, Mr. Chairman.

The Examiner: Have you many more questions?

Mr. Troy: Oh, yes. Yes.

The Examiner: Perhaps we had better take a recess.

(Whereupon a short recess was taken after which proceedings were resumed as follows:)

The Examiner: Are you ready, Mr. Troy?

Mr. Troy: Yes.

The Examiner: Proceed with your next question, please. [1315]

By Mr. Troy:

Q. You have large amounts of money—I believe at present there is about $400,000 or over—of consumers' deposits?

A. I don't know the exact amount.

Q. What is done with those deposits?

A. They are returned to the consumer when his credit has been established.

Q. What?

A. When his credit has been established they are returned to the consumer under the rules and regulations prescribed by the Railroad Commission.

The Examiner: Including interest, do they not?

(Testimony of James B. Black.)

The Witness: I think so, yes. I am not sure.

By Mr. Troy:

Q. Since what period has that been done?

A. Well, so long as I can remember.

Q. Well, is it not a fact that the company did not return deposits of consumers paid to it to establish credit although the consumer paid his bill every month for five years, came to the office every month for five years and gave no credit at all for that money—his deposit—and at the end of the five years, when the statute of limitations had gone, then the company deposited that deposit in its own surplus fund? [1316] A. No.

Q. Well, you are testifying opposite to that of Mr. Hodges.

The Examiner: All right. The next question, Mr. Troy.

By Mr. Troy:

Q. When you say "no", Mr. Black——

Mr. Phleger (interposing): He means "no".

Mr. Troy: What did he say?

The Examiner: He said, When he says "no" he means "no".

Mr. Troy: Oh, indeed! Is that so? That's surprising!

By Mr. Troy:

Q. Do you mean solely during the period that you have been president or do you mean the entire history of the company.

(Testimony of James B. Black.)

A. I am sorry, I can't testify as to the entire history of the company.

Q. Then you mean "no", solely since the time you have been president of the company?

A. I mean just as I have testified: That we did take deposits from consumers who we feel have not sufficiently established their credit in order to protect ourselves and the other consumers, and when they have established credit then their deposits are returned to them. And we have a relatively small amount of money represented by deposits of customers. I don't recall the amount, but, as I recall, it is [1317] getting smaller each year.

The Examiner: And that is done pursuant to regulations of the California Railroad Commission?

The Witness: In all instances, yes.

The Examiner: And, so far as you recall, that has been the practice for some years?

The Witness: For 28 years.

Mr. Troy: For 28 years. Then, Mr. Hodges made an incorrect statement in his sworn testimony in the gas case.

The Examiner: All right, go ahead.

The Witness: Of course, those rules and regulations are changed from time to time and I don't recall specifically what they are today.

By Mr. Troy:

Q. What other deposits than those who have established credits are made by consumers?

(Testimony of James B. Black.)

A. Well, in some instances, where we make extension into territory which is not productive or not sufficiently remunerative to justify our making the entire expenditure on our own, we collect a deposit from prospective consumers which is returned to them over a period of years.

Q. In their bill for gas for gas or electricity?

A. It is refunded on some formula. The formula changes from time to time. I don't recall just what it is.

Q. Do you call these latter deposits that you speak of [1318] "deposits" or "advances"?

A. I think they are called "advances in aid of construction". I am not sure of the technical term.

Q. Your annual report states that customers' deposits for the last year at the end of July 31, 1939 were $445,309 and the advances were $832,-096.95. In reading the transcript, Mr. Black, I noticed a little inconsistency. It was probably some omission. But on cross examination you stated that North American Company had invested an investment in Pacific Gas and Electric Company of $60,000,000. A. That's correct.

Q. And at other times either you or the other witness—you, yes—testified that the North American Company, after your discussion with Mr. Hockenbeamer and all, in the settlement of the matter received 1,825,000 shares of Pacific Gas and Electric stock. A. That's correct.

Q. And that you paid for that $2.00?

(Testimony of James B. Black.)

A. (No response).

Q. It's so in the transcript.

A. Paid $2.00.

Mr. Troy: I think it must be in error.

The Examiner: If it is an error, counsel for both parties will later examine the transcript and an appropriate correction can be made. It pays a two-dollar dividend. You [1319] may have some confusion in your notes.

Mr. Troy: "For which they paid $2.00."

The Witness: Probably I said "It pays $2.00."

By Mr. Troy:

Q. And that also it cancelled a debt of $19,000,000. That would be a total of $22,650,000. If that is incorrect, Mr. Black, what price was paid for the stock?

A. The statement I made was that the North American Company had an investment of about $60,000,000 in the property. Now, that refers to the price at which they carry their investment on the books, or did carry it. I am not familiar with what they have done in recent years, but that stock stood on the North American Company books as an investment at about $30 a share.

Q. $30.00?

A. And in addition to the 1,825,000 shares, which Western Power Corporation, a subsidiary of North American Company, received for its interest and the cancellation of the debt owing by its California subsidiaries, I should say, in addition to that

(Testimony of James B. Black.)

1,825,000 shares they acquired 185,000 shares through the exercise of a 10 percent right offering.

The Examiner: At about what price?

The Witness: That was at par, which was made to all common shareholders. [1320]

By Mr. Troy:

Q. That was one of those matters where they offered to the common stockholders stock at par when it was above the market?

A. That is correct.

Q. Well, Mr. Black, why did not the company charge the market for that stock and the other stocks and then have made up the deficiency where it sold stock in the earlier days at less than par?

A. I don't know. I was not the president of the company at that time.

Q. If there was any deficiency between the stock moneys received for the stocks and bonds net and the gross assets of the company, how were the gross assets made to exceed the money received from stock and bonds?

A. I don't understand the question.

Q. Well, if the—you say that the assets today are about $800,000,000? A. That's correct.

Q. And if they received for stocks and bonds net about $600,000,000, how would they make up the deficiency?

A. Well, there has been a great deal of money plowed back into the business out of earnings.

Q. $200,000,000, do you think?

(Testimony of James B. Black.)

A. I don't know the exact figures. I don't know that [1321] your figures are correct. We have a $500,000,000-odd surplus; we have a depreciation reserve of about $125,000,000; and there are other reserves which have been accumulated out of the proceeds of the business.

Q. Yes. Well, that's proper depreciation reserve. But that is not a profit. A. Not at all.

Q. That is to replace property when it gives out. A. That's correct.

Q. Your report states that you acquired the stock of the Vallejo Electric Light & Power Company in 1929. A. That's correct.

Q. And you acquired 4,583⅛ shares?

A. That's correct.

Q. And the book cost, which I suppose is the actual cost to your company——

A. (Interposing) That's correct. I think the number of shares which we issued for that stock was set up on the books at par, as has been the custom for many years.

Q. And the book cost was $229,166.67?

A. I don't know that that figure is correct.

Q. This is your own report here to the Railroad Commission. And the dividends were $32,083.28 on that stock.

The Examiner: Per year?

Mr. Troy: Yes, that year. [1322]

The Examiner: All right. Go ahead with the question.

(Testimony of James B. Black.)

Mr. Troy: How?

The Examiner: Proceed with the question. You are reciting the facts. Now let us have the question.

By Mr. Troy:

Q. That dividend represented 14 percent return on your investment. Now, the rates charged by the Vallejo Company are about the same as the rates that your company charges here in San Francisco and Oakland. A. Are they?

The Examiner: Go ahead. Have you a question to base upon those facts?

Mr. Troy: Yes.

By Mr. Troy:

Q. Now, why do you charge such a higher rate in so many of the other cities and towns of California, some of them having a much larger population and number of consumers than Vallejo has, and some about the same?

A. Well, our rates are set by the California Railroad Commission and they are zoned to reflect approximately the cost of service to the various communities and the zones served. The larger communities have the lower rates and the rural area pays a little higher rate, but they are designed to return to the company an adequate amount to take care of its requirements. Now, I am not an expert on rates and I can't [1323] give you an answer which would explain all of the intricacies of the spread of rates. I certainly couldn't compare our rates with Vallejo rates except to tell you that

(Testimony of James B. Black.)

Vallejo Company serves a very remunerative area and has relatively little distribution in the so-called thin territory, the rural areas, which to some extent on our system the more congested areas have to carry. We cover approximately all of the territory in which anyone lives in northern California and there is a great deal of that territory which does not produce sufficient money to carry the return on the investment that we make there, and the Railroad Commission in setting up our rate structure, which consists of, say, 40 or 50 rates, takes into consideration the return on the entire property and also keeping in mind the actual cost of service in the various zones which we serve.

Q. And you mean to say, then, that you charge a higher rate in San Francisco and Oakland, the Bay area, and Sacramento and Stockton and San Jose and other cities than would be necessary if the needs of those cities only were considered?

A. No, I don't say that. I don't think I can give you any more answer——

Q. (interposing) What?

A. I can't give you any more——

Q. (interposing) Well, you make the cities bear the burden of the loss of the country. [1324]

Mr. Phleger: Now, Mr. Examiner, I think he has asked the question and received an answer, and I don't think he ought to argue with the witness.

The Examiner: I think so. The objection is sustained.

(Testimony of James B. Black.)

Mr. Phleger: Or make a speech either.

The Examiner: Go ahead with your next question, Mr. Troy.

By Mr. Troy:

Q. The North American Company and the Pacific Gas and Electric Company were in competition before the combination or consolidation?

A. No. The North American Company wasn't in competition.

Q. Not directly, but through its subsidiaries?

A. It was in the north part of California, yes.

Q. And both of the companies were pretty near broke through the competition where they were competing? A. No.

Q. Were they selling for less than cost?

A. I think not.

Q. You stated that you objected to the reduction of the dividend of the company from 8 percent to 6 percent and that the North American Company objected also. That's in 1933.

A. I stated that I thought that the dividend action of the Board should be reconsidered and that the full Board should [1325] pass on it.

Q. Because you thought it ought to be 8 percent instead of 6 on account of the condition of the surplus, you said.

A. I said that I would probably have voted to maintain the dividend for at least another quarter or two, but my only action was to request a reconsideration of it.

(Testimony of James B. Black.)

Q. Was the Pacific Gas and Electric Company losing money at that time on its electrical business?

A. I don't know. You mean with respect to an adequate return of its property?

Q. Yes. A. I don't know.

Q. Since you have become president, then, you haven't looked into any of the past financial history of the company? A. Oh, yes; some of it.

Q. You know Mr. Olney who was the attorney for the company? A. I did.

Q. And also his associate in that firm who represented the company here in their argument. At that time they argued for a high gas rate on the ground that the company was losing money on the electrical side. Now, would that be true?

A. Well, they probably——

Mr. Phleger (interposing): I object to this line of questions. It certainly has no bearing on what Mr. Olney and [1326] Mr. Matthew may have argued in some rate proceeding.

The Examiner: Well, there is no time specified as to when P. G. & E. might have been losing money on its electrical business. Do you want to limit that question to a period of time? You have asked Mr. Black whether or not Mr. Olney's statement is correct, that it was losing money on the electrical business. At what time were they supposed to be losing money on their electrical business?

Mr. Troy: In that year of 1932. It was so stated by Mr. Olney and his associate.

(Testimony of James B. Black.)

The Examiner: All right. Do you know whether they were losing money on their electrical business?

The Witness: I don't know what the term "losing" money means, but quite likely what is referred to is a statement which Judge Olney might have made with respect to the electric department earning an adequate return, and he perhaps did make that statement. And if he did make it, I am sure it was correct.

By Mr. Troy:

Q. Yes. Well, if that is the case why has the company since then reduced rates?

A. Because we have been able through more efficient operation and through savings which have been instituted to reduce rates in the past five years to the extent of about 20 percent of our gross, and we hope to continue to reduce them [1327] as we are able and as we are able to make economies and increase the efficiencies of operation.

Q. Now, the first reduction, I believe, was made soon after you became president, wasn't it?

A. The reductions have been made for 40 years.

Q. Well, I mean of those few referred to in the past five years? A. Yes.

Q. And that you said amounted to, I think, $2,600,000-odd, so the papers quoted you; close to that.

A. Well, there have been reductions, I think, every year in the last five.

(Testimony of James B. Black.)

Q. I am asking you as to that first one that you made when you became president.

A. I don't recall the amount. The only one that I recall specifically is the one that we put into effect in October of this year, which amounted to $5,000,000 a year.

Q. I am not referring to that. I will ask you about that later.

The Examiner: He is answering your question, Mr. Troy. He says he doesn't recall the amount of the earlier ones but he does recall this one.

The Witness: I can give you the aggregate in the six years, which is approximately $20,000,000.

Mr. Troy: What I wanted—Mr. Black's statement was [1328] published in the papers. He may remember it when I state this.

The Examiner: Go ahead.

By Mr. Troy:

Q. The reason that reduction was made was that you had recovered up to that time the extraordinary expense or other expense put upon the company because of the cut-over; that is, where you adjusted the burners of consumers and the like.

A. I think you have switched from electricity to gas on me here.

Q. Well, you are right there on that.

A. That gas rate——

Q. (interposing) You're right. I am mixing the two up there.

(Testimony of James B. Black.)

A. The gas rate reduction was in the middle of 1936, and that was due to the fact that we had recovered the loss of earnings during the depression and that we had recovered and recouped the cut-over expense and extraordinary maintenance expense arising out of our change-over from artificial to natural gas service, and that we had succeeded in increasing the use by our consumers and decreasing relatively our cost of service to the point where we could make a voluntary reduction, which we did.

Q. Well, how did you recover it? Out of rates? The money collected? The rates charged the consumers?

A. Yes. They would have to come from our gross income. [1329] Yes.

Q. That is, you made the consumers pay that cost?

A. Correct. It was part of the cost of service just the same as the payroll.

Q. Now, is it not a fact, Mr. Black, that your company at the time and before the cut-over was made advertised extensively in the newspapers and on signboards and your men visiting the consumers also told them that there would be no charge for that cut-over?

A. Well, I don't know what you are talking about.

Q. What?

A. I don't know what your statement means.

(Testimony of James B. Black.)

Q. Your company——

A. (interposing) I think what you are referring to perhaps is the fact that we made adjustments on consumers' burners.

Q. Yes. A. That's correct.

Q. And other costs. And you told the consumers—your men did—and you also advertised in the newspapers and advertised on signboards that the company would not charge the consumer for the expense of that cut-over or adjustment of burners.

The Examiner: Mr. Troy, was there any special charge made for any such adjustments and transfers? [1330]

Mr. Troy: It is in the rate.

The Examiner: I see.

Mr. Troy: And they told the consumers that there would be no charge and then secretly made them pay for it in the rate.

The Examiner: All right. Do you want to answer that question, Mr. Black?

A. Well, I don't think there was any secret about it, that we were expecting to recover the cut-over expenses and the extraordinary maintenance arising out of the change-over from artificial to natural gas. That was a matter involved in proceedings before the Railroad Commission intermittently over a period of five or six years and there was no secret whatsoever about it, and I don't

(Testimony of James B. Black.)

believe that Mr. Troy is accurate in his statements.

By Mr. Troy:

Q. Well, you know, Mr. Black, don't you, that your company did promise the consumers that there would be no charge for the adjustment of their burners?

A. I don't know anything about it. I wasn't here at the time and I have no knowledge of what was published or told the consumers with respect to any of your question.

Q. Well, I suppose we can get thousands of consumers to come here to testify to that fact, if necessary. When the objection was made to the reduction of the dividend from 8 [1331] percent to 6 percent, was it not made necessary by the large payments the company had made in that cut-over and the other expenses of the change?

A. It was thought by the Board of Directors that the earnings of the company and the prospect for earnings in the immediate future did not justify the payment of an 8 percent dividend.

Q. Well, when you say "earnings" you mean net I suppose?

A. Balance for common stock.

Q. What? A. Balance for common stock.

Q. I mean of the gross earnings of the company. You mean the net earnings after deducting expenses?

(Testimony of James B. Black.)

A. I mean the balance for common stock; the common stock earnings.

Q. But you said "earnings", and when you said "earnings"——

The Examiner (interposing) He has explained what he meant by telling you that he meant, and now reiterates, the net earnings which were remaining over available for distribution to the common stockholders.

Mr. Troy: Well, that's after deducting expenses, eh? And it would include this $2,600,000-odd?

The Examiner: I don't know what "$2,600,000-odd" you are referring to, but I think his answer is clear.

Mr. Troy: I beg your pardon? [1332]

The Examiner: I think he has answered your question. Go ahead with your next question.

Mr. Troy: I see some of the gentlemen down there who testified that the North American Company at no time attempted to interfere in the affairs of the company and made no suggestions of any kind, and that it invested the $60,000,000 in the P. G. & E. by throwing it over to the company——

The Examiner (interposing): Have you a question of this witness now?

Mr. Troy: Yes.

The Examiner: All right. Go ahead with it.

(Testimony of James B. Black.)

By Mr. Troy:

Q. I want to ask Mr. Black if any person should offer the North American Company at that time or since to sell to them the Golden Gate Bridge or the San Francisco Bay Bridge would they buy it from them?

A. I am sorry, I can't answer that question.

Mr. Troy: Well, they were so innocent that I thought that they might do that.

The Examiner: Well, they are an eastern company. They would want the Brooklyn Bridge, wouldn't they?

By Mr. Troy:

Q. Mr. Black, you haven't yet stated what salary you received from the North American Company.

Mr. Phleger: I object to that. [1333]

The Examiner: There has been an objection made, and the objection is sustained.

Mr. Troy: Oh, yes. I beg your pardon, Mr. Chairman.

By Mr. Troy:

Q. Now, you stated that you discussed politics with Mr. Hockenbeamer, among other things; financial matters and politics and other things.

A. I think not. I think that I said——

Q. (interposing) What?

A. I think I stated that I discussed elections with Mr. Hockenbeamer.

Q. Elections? A. Elections.

(Testimony of James B. Black.)

Mr. Troy: Well, the word in the trancript as I read it was "politics".

The Examiner: All right. This is preliminary. Now, go ahead with your question.

By Mr. Troy:

Q. Did that discussion of politics include any discussion of the election of Mr. Rossi for Mayor of San Francisco? A. I think not.

Q. Did it include any discussion of Hetch Hetchy? A. Quite likely.

Q. Quite likely. Did it include a discussion of a [1334] means of defeating the City of San Francisco from getting Hetch Hetchy for its own purposes?

A. I don't think I ever discussed any ways and means with Mr. Hockenbeamer with respect to that or any other matter which had to do with elections.

Mr. Troy: What?

The Examiner: Will you read the answer, please?

Mr. Troy: What?

The Examiner: Do you want to listen to the answer? The reporter will read it for you.

(The answer referred to was read by the reporter as above recorded.)

By Mr. Troy:

Q. Did you or your company spend any money to bring about the defeat of Mr. Havenner for a member of Congress? A. Not one dollar.

(Testimony of James B. Black.)

Q. What? A. Not one dollar.

Q. Did you permit or did you pay for signboards that were used that had Mr. Havenner's opponents name on them advertising his opponent?

A. No.

Q. You do a large advertising in signboards?

A. I beg your pardon?

Q. Your company does large advertising on the signboards [1335] that are about the City?

A. We do our own advertising.

Mr. Phleger: He has answered the question and I see nothing gained by arguing about it.

The Examiner: I think he is propounding a further question. That is, he is stating it in an affirmative way: That the company does spend a lot of money for billboard advertising, does it not?

The Witness: For its own purposes; for advertising its own products.

By Mr. Troy:

Q. Do you have a signboard or advertisement for natural gas at the present time of Foster and Kleiser on the north side of Oak Street east of Baker? A. I don't know.

Q. Mr. Williamson, who was a candidate for the Assembly against Mr. Gaffney, had his sign on that same board up to the time you put up your sign. Did you pay for the board while Mr. Williamson's sign was on it? A. I haven't any idea.

Q. What?

(Testimony of James B. Black.)

A. I haven't any idea. If we paid for the board it was—may I have that question again?

(The question referred to was read by the reporter as above recorded.) [1336]

The Witness: No.

By Mr. Troy:

Q. How do you rent those boards? Do you rent a particular, specific board? A. We do.

Q. For a certain period? A. We do.

Q. And this board on Oak Street that I speak of, east of Baker on the north side, had you rented that for a specific period or have you just rented it?

A. I don't know. I haven't the least idea.

Q. Then it is possible, then, that that board was the property of the—the right to put a sign up there—the property of your company while Mr. Williamson's sign was on it?

A. It is not possible that we pay for any sign-board for the use of anyone running for office in San Francisco. That, as I understood, was the purpose of your question.

Q. That's the purpose of it, yes.

A. That's my answer.

Q. You do your own advertising? That is, you write your own advertisements?

A. Our publicity department does. I don't write them personally.

Q. Who is the head of your publicity department? [1337] A. Mr. Al Joy.

(Testimony of James B. Black.)

Q. Mr. Al Joy. And you send those advertisements or reading notices or whatever they may be out to the papers?

A. We send our copy to the papers when we buy advertising space, yes.

Q. And that might be a straight ad or it might be a reading notice or reading matter of some kind?

A. It would be a straight advertisement.

Q. No reading matter at all?

A. Well, there would be reading matter in the advertisement, yes.

Q. Not in the straight ad, but I mean where——

The Examiner (interposing): Does the company furnish news items for the papers out of its publicity department?

That is what you mean, is it not?

Mr. Troy: What?

The Examiner: Does the company furnish the papers news items in addition to their paid advertisements? Is that what you want to know?

Mr. Troy: Yes. And if they pay for them also, those news items.

A. We furnish news items relating to the company's business which we think may be of interest to the reading public. Sometimes they are published by the newspapers, sometimes they are not. We never pay for them. [1338]

By Mr. Troy:

Q. You never pay for them?

A. We never pay for them.

(Testimony of James B. Black.)

Q. What rate do you pay for your advertising?

A. We pay the going rate for the periodical in which we advertise. I suppose that they all have different rates.

Q. Isn't it a fact that the newspapers of San Francisco and elsewhere, I believe, charge your company ten times the regular rate for advertising?

A. It is not a fact.

Q. Did they ever charge your company ten times the regular rate?

A. Not to my knowledge.

Q. Are these reading notices paid for or are they put in by the paper free of charge?

A. If the paper publishes them as news they are published as news, and we pay nothing for them. We pay for the advertising space that we buy and nothing else.

Q. Well, there appeared in various papers of San Francisco and in some of the outside, throw-away, gutter sheets news items on Hetch Hetchy and Secretary Ickes, violently attacking Secretary Ickes; and in some of those papers those articles appeared word for word the same in each of the papers.

The Examiner: Do you have copies of those, Mr. Troy, with you? [1339]

Mr. Troy: No, I have not.

The Examiner: Do you desire to introduce them in evidence?

Mr. Troy: Well, I don't know whether I could get them now or not.

(Testimony of James B. Black.)

The Examiner: All right. Go ahead. That is a preliminary statement. Now, proceed with your question.

By Mr. Troy:

Q. Did your company write advertisements or news items of that kind? A. Certainly not.

Q. Did you make suggestions to anyone to write them? A. Certainly not.

Q. Did any person in your office, in your publicity department, make any suggestion to any person?

A. I can't answer for everybody in my organization, but I am sure that the answer would be "no".

Mr. Troy: Then it is a great mystery, Mr. Chairman, that these articles would appear the same in these papers word for word.

The Examiner: You can enlarge upon that in your written argument, if you propose to file one.

Mr. Troy: Yes. Thank you.

By Mr. Troy:

Q. Now, what does the money that you are paying San Francisco for Hetch Hetchy power amount to per kilowatt, say, [1340] for the past year?

Mr. Phleger: Now, Mr. Examiner, I don't see any relevancy of this to the matter which is the subject of this proceeding.

The Examiner: The objection is sustained.

(Testimony of James B. Black.)

Mr. Phleger: I don't want to make objections, but most of these questions are not material and this certainly isn't.

The Examiner: An objection has been made upon the ground that that line of questioning is not material to this issue, and the objection is sustained unless you want to indicate what you expect to prove by this line of inquiry.

Mr. Troy: I thought it was germane because of the fact that the Commission considers the interest of the public and of the consumers. And this company in the proposed lease to San Francisco of its distribution system in San Francisco proposes to charge the City for the additional current that the City will need 8 mills per kilowatt, and that is almost twice what the company is paying the City.

The Examiner: It still appears to me, as counsel has stated in his objection,——

Mr. Troy (interposing): What?

The Examiner: It still appears, as counsel has stated in his objection, that that is not material to the issue in this proceeding.

Mr. Troy: Not on the ground of the protection of the [1341] public and of the consumers? The City is at the mercy of this company and has been for years in every way.

The Examiner: Are you trying to show that the City will have to pay the Applicant here more for its power than the company is now paying for what it gets from Hetch Hetchy?

(Testimony of James B. Black.)

Mr. Troy: Yes. That is to say that the company wants the City to pay it about a hundred percent more for the power than it is paying the City for the power.

The Examiner: Well, that issue is being determined apparently by some other tribunal than this one——

Mr. Troy (interposing): No.

The Examiner (continuing): —and has not yet been decided, as I understand.

Mr. Troy: Not the matter of that charge.

The Examiner: I will sustain the objection.

Mr. Troy: All right, Mr. Chairman.

The Witness: It isn't the fact, if it is of any interest to you.

The Examiner: Just a minute! I think Mr. Black's observation to my comment might appropriately appear in the record, if it is not already there.

The Reporter: It is there, Mr. Examiner.

The Examiner: Pardon my interruption. Go ahead.

By Mr. Troy:

Q. The amount of money the Pacific Gas and Electric [1342] Company pays the City of San Francisco for Hetch Hetchy power is based on a certain setup which includes a line loss of 26 percent. Is that correct?

A. I don't recall the percentage. It is based upon a transmission loss, yes.

(Testimony of James B. Black.)

Mr. Phleger: Mr. Examiner,——

Mr. Troy (interposing): And that is a loss——

Mr. Phleger (continuing): —don't you think it would be appropriate in the interests of getting somewhere and holding the evidence down to material matters to have counsel—or Mr. Troy, rather, since he alleges he is not an attorney—state what he expects to prove by these various lines of questioning?

The Examiner: That is what I attempted to do and he said he wanted to show that the City was going to be required to pay more for the power they might have to purchase from the Pacific Gas and Electric Company than the Pacific Gas and Electric Company is now paying for what power they buy from the City at the Hetch Hetchy development program, and I sustained an objection to that line of testimony.

Is this a new line of testimony, Mr. Troy?

Mr. Troy: Well, yes, in this respect:——

The Examiner (interposing): All right.

Mr. Troy (continuing): —the Pacific Gas and Electric Company based the charge at that time on a line loss of 26 [1343] percent and that was confirmed by the electrical journals, that its line loss was the heaviest, largest of any of the electric companies in the United States. Then we also had—and I guess Mr. Black was operating—the City Electric, were you not, Mr. Black?

The Examiner: At what time?

(Testimony of James B. Black.)

Mr. Troy: At the time of the Hetch Hetchy so-called—in 1925 when the so-called "agreement" was entered into between the Pacific Gas and Electric Company and the City in 1925.

The Examiner: The new proposed lease has not yet been approved, has it?

Mr. Troy: No.

The Examiner: What do you expect to show in this proceeding, then, by going into this history of what their line loss was or was not in 1925?

Mr. Troy: The line loss of the City Electric—that was one of the subsidiaries or afterwards became the subsidiary—its property did—of the North American Company. Its line loss in San Francisco was 14 percent——

The Examiner (interposing): All right.

Mr. Troy (continuing): —shown by Mr. O'Shaughnessy and the figures that he gave. The company since has acquired the City Electric property, and its line loss—average line loss—over the San Francisco system was, I think, about 22 [1344] percent, Mr. Black.

The Witness: I think it is a little more than that. But I think what you are trying to do is to compare distribution line loss with distribution line loss plus transmission line loss.

Mr. Troy: Oh, no. Not at all.

The Examiner: All of this goes to the question of whether or not the rates are fair, does it not?

(Testimony of James B. Black.)

Mr. Troy: It goes to this, Mr. Chairman: Whether the company is dealing honestly with the City of San Francisco in that rate, although its line losses now are about 4 percent less than they were when the agreement was entered into—and there are other savings—yet it has made no reduction or, rather, no increase in the compensation paid the City of San Francisco. It is still maintained on the same basis.

The Examiner: All right. Now, have you some other line of inquiry that you want to propound?

Mr. Troy: Yes.

The Examiner: What does it relate to?

By Mr. Troy:

Q. Your company is paying large sums of money to hundreds of improvement clubs and other organizations?

A. We try to do our part in supporting these civic enterprises.

Q. As is shown by your report on the General Order 77-A [1345] of the Railroad Commission?

A. All such contributions are——

Q. (interposing) What?

A. All such contributions are reported to the Railroad Commission and disallowed in rates, I think, almost entirely.

Q. Now, the Chamber of Commerce, the Downtown Association and Mr. Eliel, who is now on the staff of Stanford University, went before Secretary

(Testimony of James B. Black.)

Ickes on behalf of your company to prevent Secretary Ickes from allowing the injunction to stand. Was not your company paying money, as shown by your report to the Railroad Commission in that 77-A General Order—was not your company paying money to each of those organizations represented there?

A. We were paying——

Mr. Phleger (interposing): Mr. Examiner——

Mr. Troy (interposing): What was the answer, please?

Mr. Phleger (continuing): —he is asking this witness for a conclusion there. He is stating the fact that contributions were made and he stated what these people did.

The Examiner: Counsel has not agreed that the statement of fact is correct. I think the question is appropriate and the objection will be overruled.

The question is, as I understand it, Did not the Pacific Gas and Electric Company pay as reported to the Railroad Commission certain sums to these organizations? [1346]

Mr. Troy: Yes.

The Examiner: And they reported it and it is a fact, is it not?

The Witness: It is a fact that they are continuing sums in the form of dues and so forth.

The Examiner: All right. The next question, Mr. Troy. We are coming close to the recess now. We will have to move along.

(Testimony of James B. Black.)

Mr. Troy: I have got quite a number more here.

The Examiner: Go ahead. We will try to finish them up. I would like to permit Mr. Black to leave at the noon recess and not necessitate his return.

Mr. Troy: Oh, I see.

The Examiner: He is a very busy man, so if you can move along.

Mr. Troy: I will hurry through.

By Mr. Troy:

Q. Mr. Black, your company has been advertising recently that you have reduced rates, both gas and electricity——

A. (interposing) That's correct.

Q. (continuing) —to a total amount of $5,000,000. A. That's correct.

Q. Was that reduction imposed on you by the Railroad Commission or voluntarily on the part of your company?

A. It was the result of negotiations with the Railroad [1347] Commission, and those negotiations developed the desirability of reductions in both gas and electric rates. I can't say that it was entirely voluntary.

Q. The Railroad Commission held many meetings that it called "informal conferences" with consumers in a number of cities or with generally only the officials or some officials of the City. Now, was

(Testimony of James B. Black.)

your company represented at any of those informal conferences?

A. I think we had one of our local people sit in at the meetings in order that they might answer any questions that might be asked.

Q. At what meetings did they sit in at?

A. At these conferences which were held by the Railroad Commission representatives in the various cities.

Q. Are you sure of that? I didn't notice the name of anybody representing your company in the transcripts.

A. I think in each instance we had someone present to answer any questions that might be asked.

Q. Was any sworn testimony taken at any of those informal conferences?

A. Not that I know of.

Q. Is there any testimony sworn to of any kind that will enable me or will enable any consumer to verify the truth of your statement, that you have reduced rates $5,000,000?

A. I don't know. If you want to get the real answer [1348] you can get it from the Railroad Commission, who have investigated our earnings and records very carefully over the period of the past five years and particularly during the past year with respect to this recent rate reduction, and they know all there is to know about everything that has to do with——

(Testimony of James B. Black.)

Q. (interposing) Well, Mr. Black, I hope you are not trying to make a goat of the Railroad Commission.

A. I am not. I am telling you just how these rate reductions are arrived at.

Q. Is it not a fact, Mr. Black, that these reductions have been made heretofore that you speak of —they were made by an order of the Railroad Commission?

The Examiner: The question has been asked and answered.

Mr. Troy: I beg your pardon?

The Examiner: You have already asked that question. He has answered it.

Mr. Troy: No, you don't catch me. The previous reductions——

The Witness (interposing): All rate reductions are made by order of the Railroad Commission.

By Mr. Troy:

Q. This reduction—there was no order at all of the Railroad Commission, was there?

A. I am quite sure there was.

Mr. Troy: Well, I have looked over the papers and I [1349] couldn't find any——

The Examiner (interposing): All right.

Mr. Troy (continuing): —and I have here the——

The Examiner (interposing): Mr. Troy, if Mr.

(Testimony of James B. Black.)

Black's answer is incorrect he has given you his best recollection.

Mr. Troy: Yes.

The Examiner: And if you want to introduce the proper evidence in the way of a document or certificate from the proper official of the Railroad Commission to show that an order did not issue by the Railroad Commission relating to this last reduction, contradicting his statement, that could be done in an appropriate way. But there is no necessity of arguing with this witness.

Mr. Troy: No. You are right. I beg your pardon.

The Examiner: He has given you his best recollection. Can you proceed with your next questions so we can move along here, please?

The Witness: May I say I don't know what form the order may have taken. It may have taken the form of a formal approval of rate schedules, which we must obtain in all instances. Whether there was a formal order or——

By Mr. Troy:

Q. (interposing) Now, here is Schedule D-1, Domestic Service for the City of San Francisco, Oakland, Berkeley, Piedmont, Emeryville, San Leandro and Albany, with the rates [1350] and all that your company filed with the Railroad Commission, date effective October 8, 1940 and date issued September 30, 1940. Now, is there anything

(Testimony of James B. Black.)

on that that shows that it was made by order of the Railroad Commission? A. No.

The Examiner: The answer is "no".

Mr. Troy: "No"?

The Examiner: You were under the table and didn't hear it, I think.

By Mr. Troy:

Q. So that these rates have been issued, as far as the record goes, by your own company on your volition and not by order of the Railroad Commission?

A. And filed with the Railroad Commission as required by law, and they would not be made effective unless they had the approval of the Railroad Commission.

Q. This that I just showed you was given me by your office where I pay my bill down on Sutter Street, and I have also the schedule of the rates. In nowhere does it say that these rates were fixed by the order of the Railroad Commission——

The Examiner (interposing): All right.

By Mr. Troy:

Q. (continuing) —although the previous rates prior to that time were.

The Examiner: All right. [1351]

By Mr. Troy:

Q. And how can a consumer or any other person verify your statement that you have reduced rates $5,000,000?

(Testimony of James B. Black.)

The Examiner: That question has been asked and answered. He refers you to the files of the Railroad Commission.

Mr. Troy: No. They don't show, Mr. Chairman. He is trying to pass it off to the Railroad Commission.

Pardon me, Mr. Black.

The Witness: No, I am not trying to pass it off at all.

The Examiner: I think he has told you that, as a matter of law, they can't impose a rate structure without the approval of the Railroad Commission and, therefore, the Railroad Commission has the information.

Mr. Troy: No. All they do and all they have done in this case was to file the rate with the Railroad Commission and the Railroad Commission accepted the rate.

The Examiner: All right.

Mr. Troy: But that don't give sworn testimony of any kind and, in fact, the rate itself don't give any testimony as to how the rate was arrived at.

The Examiner: May I ask you this, Mr. Black: If the information is not available in the files and records of the Railroad Commission of the State, do you know anywhere that that complete information is available as sworn testimony?

The Witness: I do not. [1352]

The Examiner: All right. Go ahead.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Is your company merely guessing at this $5,000,000 reduction?

A. No. We are estimating it very accurately.

Q. What?

A. We estimate it very accurately.

Q. Estimate it?

A. There is no other way to get at it.

Q. Now, your company introduced natural gas into San Francisco about 1930?

A. That's correct.

Q. And natural gas was in use in the City of Los Angeles and other cities in the southern section of the State for fully ten years before that time?

A. I think that's approximately correct, yes.

Q. And what was the reason that your company introduced natural gas here?

A. Because it was possible to do it as a result of the Kettleman Hills discovery about 200 miles south of San Francisco, which made the transmission of natural gas and its introduction on our system possible.

Q. Was not one of the companies in Los Angeles getting gas from the San Joaquin Valley, approximately the same area where you now are getting gas from, conveying it to Los Angeles [1353] and distributing it and selling it there for ten years before your company started to sell natural gas?

(Testimony of James B. Black.)

A. I don't know that. I presume that some gas was transported from the San Joaquin Valley.

Q. What?

A. I presume that some gas was transported from the San Joaquin Valley for ten years, transported to Los Angeles; but a great deal of the gas supply of Los Angeles comes from the Los Angeles Basin.

Q. Yes, that's true. But I mean they did acquire the Midway Company, wasn't it, that was transporting it? They had the subsidiary called the "Midway Company" that was transporting it from the San Joaquin Valley to Los Angeles?

A. I think so. I am not sure.

Q. And why is it that your company—the distance that they conveyed it was approximately the same as the distance you now convey gas to San Francisco, isn't it, from the southern part of the San Joaquin Valley?

The Examiner: I can take judicial notice of that. I can look at a map.

Mr. Troy: What is that?

The Examiner: I can take judicial notice of that by looking at a map. Do you have a question now predicated upon that fact?

Mr. Troy: Yes. [1354]

The Examiner: Go ahead.

By Mr. Troy:

Q. Is it not a fact that your company was opposed to the installation of or furnishing of the

(Testimony of James B. Black.)

natural gas to the people of San Francisco and that it did nothing—first, I will ask that first question.

A. Not to my knowledge.

Q. Is it not a fact that your company did nothing to supply natural gas to the people of San Francisco up to about 1929, approximately?

A. Well, I am quite sure there were a great many investigations made prior to that time as to the feasibility of bringing natural gas into San Francisco, but it was not until the very large Kettleman Hill discovery was made that it was deemed that the supply was sufficient to justify the expenditure of the money necessary to build transmission lines and to change over from artificial to natural gas. That discovery, which is one of the largest fields in California, made it possible to bring natural gas to San Francisco. And immediately after the discovery the start was made to do so.

Q. Is it not a fact, Mr. Black, that the Standard Oil Company first took steps to supply natural gas to this Bay area, and also the Western Pipe Line Company, I believe—I am told it is a Texas concern—and that they, both of them, applied to the Railroad Commission for permission to build pipe lines [1355] and transmit natural gas to this area?

Mr. Phleger: Now, just a minute. May I make this observation, Mr. Examiner?

(Testimony of James B. Black.)

By Mr. Troy:

Q. Will you answer?

Mr. Phleger: The order which appears in the record at page 1,189——

Mr. Troy (interposing): A little louder, please.

Mr. Phleger (continuing): —denying Mr. Troy's application to intervene says "It is further ordered that the said Edward P. E. Troy shall be permitted to participate in any hearing in this matter to the extent of introducing evidence and cross examining witnesses provided, however, that such evidence and cross examination are competent, relevant and material to the issues involved".

I would first make the observation that none of these questions, with the exception of possibly one or two, have been cross examination because they have been upon matters as to which this witness was not questioned about on direct. And I would make the second observation that none of them are competent, relevant and material——

Mr. Troy (interposing): Well, Mr.——

Mr. Phleger (continuing): It seems to me that, having taken something over an hour now, counsel ought to be required to state what he expects to prove by these questions and to [1356] show the relevancy and, perhaps, if he intends to introduce evidence he had better produce these people as his own witnesses.

The Examiner: You heard counsel's statement, did you not?

(Testimony of James B. Black.)

Mr. Troy: Not all of it, no.

The Examiner: He has read into the record the order which you read into the record here the other day——

Mr. Troy (interposing): Yes.

The Examiner (continuing): —limiting the extent to which you are to be permitted by Commission order to participate in these proceedings.

Mr. Troy: Yes.

The Examiner: And his point is that the questions that you have been propounding have, in the first place, not been correctly proposed as cross examination; and, in the second place, that they are not material to the issues; and infers that, in the event that you do not confine yourself to the issues, he will begin now to interpose objections to your questions, all or most of which he contends are objectionable, although he has not objected. If you have very many more questions would you mind stating for the record what you intend or hope to prove by this line of inquiry? You say you have only got two or three more there?

Mr. Troy: Oh, no. From here down (indicating).

The Examiner: What do they purport to show?

[1357]

Mr. Troy: First, will you permit me to say that this matter that he objects to—there have been statements here by different witnesses that the company is very efficient in its management; that it

(Testimony of James B. Black.)

tries to serve the people of the City; and that it is a great public benefactor, in other words. I am trying to show by the questions I have just asked that the company, and, as the questions stated,—that the company did not want to serve natural gas but it was forced to by these applications of the Standard and the Western Pipe Line.

The Examiner: All right. From here on down and the next page (indicating), is that the limit of your questions?

Mr. Troy: Yes.

The Examiner: Do you suppose you could finish those in another five or ten minutes?

Mr. Troy: I will try to.

The Examiner: Do you remember the question pending, Mr. Black?

The Witness: Yes. And I don't know the answer to it. I don't believe that the statement is correct. I was in New York at the time and, of course, it was before the Pacific Gas and Electric Company acquired the properties of the Western Power Corporation in San Francisco. But I do know generally that the reason that it was possible to serve gas here was, as I have stated, and that it is my belief that immediately upon determination of the feasibility of supply of natural gas here the Pacific Gas and Electric Company took such steps [1358] as were necessary to supply such gas, and at the present time it is supplying such gas at rates which are lower than the Los Angeles rates.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Well, you speak of "rates", Mr. Black. Were not gas rates, when the natural gas was distributed here, raised a hundred percent over the manufactured gas rate?

A. They were reduced 50 percent.

Q. How do you figure that? Wasn't a ready-to-serve charge imposed on the consumer in the first time in the history of San Francisco?

A. The rates for natural gas which were put into effect at the time of its introduction here were approximately the same as the rates for artificial gas, but the b.t.u. heating content was nearly double—approximately double—which would mean that the consumer would be able to get twice the service for the dollar.

Q. You haven't answered my question, Mr. Black. A. I am afraid I can't.

Q. Did not your company impose a ready-to-serve charge on the consumer?

A. I don't know. I don't know. I am talking about the——

Q. (interposing) Of 75 cents, and were they not charged that in addition to the rate of 85 cents?

The Examiner: 75 cents a month or just the first month? [1359]

Mr. Troy: A month; every month.

The Witness: I don't know, Mr. Examiner, the

(Testimony of James B. Black.)

various forms of the rates, but I do know the general effect of those rates——

The Examiner (interposing): All right.

The Witness (continuing): —and that is as I have stated.

Mr. Troy: Here in this gas rate, you see, Mr. Chairman——

The Examiner (interposing): Is this the same document that you referred to before?

Mr. Troy: This is the electric rate, rather. You see right above the rate schedule it says at the top "Ready to serve charge 40 cents".

The Examiner: Do you want to put this in evidence?

Mr. Troy: All right, yes.

The Witness: I might say with respect to that that our domestic rates in San Francisco are lower than the domestic rates and, I believe, the commercial rates generally in Los Angeles, and we pay out about 20 percent of our gross earnings in taxes.

The Examiner: This charge, which I don't see on this instrument,——

Mr. Troy (interposing): Here it is, see? (Indicating).

The Examiner: "Service charge per meter per month is 40 cents and 75 cents."

Mr. Troy: This is electric, and for gas it was 75 cents. [1360] Now I believe it is 70 cents.

The Examiner: All right. And the question is,

(Testimony of James B. Black.)

Mr. Black. Was this the first time that such a service charge had been imposed by the company?

The Witness: This year?

The Examiner: No. In 1935 you are talking about?

The Witness: I don't know. I don't know at all.

The Examiner: All right. Go on with your next question from your notes there.

This will be received in evidence as Exhibit A.

(The document referred to was marked "Troy" Exhibit A and was received in evidence.)

By Mr. Troy:

Q. You claim for your company compensation because the b.t.u.'s of the natural gas are higher than manufactured gas. Who produces the natural gas? Does your company produce any natural gas?

A. No, I don't think we do except in emergency; that is, of high b.t.u. gas in emergency. We, of course, don't produce any natural gas.

Q. It's the oil companies and the oil-gas companies and pure gas companies that have spent their money to sink gas wells and oil wells that are producing the gas, isn't it?

A. That's correct. We purchase practically all of our gas, but we spend the money to get it to the customer. [1361]

Q. What does it cost you to get it to the San Francisco Gate?

(Testimony of James B. Black.)

A. I don't know offhand.

Q. Isn't it the total transportation cost? Isn't it the same as was testified to in the gas case of 1933-1934, five cents a thousand cubic feet?

A. No, not at all. It's considerably greater than that, but I don't recall the figure.

Q. Transportation. And what are you paying to the companies that produce the gas for the gas? How much a thousand cubic feet?

A. We pay different rates. Every contract is different.

Q. You are paying five cents to some, six cents to some, seven to others? A. Ten to others.

Q. Yes. But it averages about six and a half cents, does it not?

A. I think it's higher than that.

Q. What?

A. I think it's higher. I don't know the exact figure.

Q. Well, the gas that you transport here to San Francisco and that is used under the boilers of your electric department, what are you charging the electric department for that?

A. I don't recall. We only use that gas when there is [1362] a surplus.

Q. So it is a heavy drain on the company?

A. It is not a heavy drain. It is just the opposite. It is used under the boilers when we have a surplus of gas which we can't sell to the regular

(Testimony of James B. Black.)

firm consumers. Our boilers in our steam plants are all equipped to use oil or gas operation.

Q. And you are charging, according to the testimony in the gas case of '33-'34, 12 cents to your electric department to be paid to the gas department for that gas that they burn. Are you charging the same today? A. I don't know.

The Examiner: Does that exhaust your questions, Mr. Troy?

Mr. Troy: Oh, no. No, Mr. Chairman.

The Examiner: I thought you had come to the end of your notes. You were folding them up.

Mr. Troy: No. I am still here (indicating), and Mr. Black by his answers suggested the other questions.

By Mr. Troy:

Q. Did not your company, the Pacific Gas and Electric Company—by the way, I should preface it with the fact that, Did not your company and the Standard Oil Company, after the decision of the Railroad Commission in that contest, join in building a pipe line up the San Joaquin Valley, in the corporation—you call it the "Stan-Pac" corporation? [1363]

A. That is correct. That's one of our lines.

Q. Yes. And also you have a line of your own up the Coast? A. That's correct.

Q. And you sell gas from that line to a subsidiary of the Standard Oil Company?

(Testimony of James B. Black.)

A. No, I don't think so. I think that gas—well, I am not sure of that. I am not sure.

Mr. Phleger: Now, Mr. Examiner,——

By Mr. Troy:

Q. (interposing) And is it not a fact, Mr. Black,——

Mr. Phleger (continuing) —we have refrained from objecting. I see no object whatever in pursuing this line.

The Examiner: There is no pending question now. There is an objection made to this line of inquiry. What do you propose to show by these two or three questions?

Mr. Troy: I want to show by this next question that the company has entered into an agreement which, if it were in interstate commerce, would be in violation of the Interstate Commerce Act and the Anti-Trust Act.

By Mr. Troy:

Q. That is to say, your company divided the State of California with the Standard Oil Company so that you agree not to intrude upon each other's territory.

The Examiner: Wait a minute. You are asserting a fact. [1364-5]

Is that true, or do you know, Mr. Black?

A. We have an agreement with the Standard Oil Company which, I believe, rose out of the proceedings before the Railroad Commission.

(Testimony of James B. Black.)

By Mr. Troy:

Q. Louder, please, Mr. Black.

A. (continuing) Which, I believe, rose out of proceedings before the Railroad Commission whereby certain gas distribution territory is taken care of by the subsidiaries of the Standard Oil Company, and that territory is quite small. It is around in northern Contra Costa County and in the general area of Santa Cruz and Gilroy, and——

Q. (interposing) San Benito and Monterey.

A. Not Monterey.

The Examiner: Has that contract been approved by the Railroad Commission?

The Witness: Oh, yes.

Mr. Troy: Yes. It is on file with the Railroad Commission.

The Examiner: And the rates pursuant thereto and which have been charged subsequent thereto have also been submitted?

Mr. Troy: There is no rates; just a division of territory.

The Witness: In all instances. And the division of territory was approved by the Railroad Commission, if I am not [1366] mistaken, and I know that the construction of the jointly-owned pipe line was approved by the Railroad Commission and our half was dedicated as a public utility, and that agreement provides for other things. It provides for the joint operation of the pipe line and it provides

(Testimony of James B. Black.)

that the Standard Oil or its subsidiaries, or both, will give standby service to us with respect to gas supply, if we need it, and we would do the same for them in the case of emergency.

The Examiner: All right; reciprocal.

By Mr. Troy:

Q. In the Standard Oil Company, as set by that agreement, your company has been selling gas and electricity to the San Juan Cement Works, and you are paying five percent of your revenue from the gas and five percent from the electricity to the Standard Oil subsidiary, are you not?

Mr. Phleger: Now, I object to that question.

The Examiner: The objection is sustained. Go ahead, Mr. Troy.

Mr. Troy: That was testified to by——

The Examiner (interposing): All right. The objection is sustained. Next question.

By Mr. Troy:

Q. Mr. Miller—you are quite a friend of Mr. Miller's. Why was it that Mr. Miller, when he gave the list of corporations that he was director of, had been in the past, omitted [1367] to state that he was a director and president of the Key Route Company in 1919-20 and some other years, and it was put through insolvency at that time, although it had been a solvent company, and he drew down just a few days before they went to court $4,000

(Testimony of James B. Black.)

as a salary from that bankrupt company? Why didn't he state that?

Mr. Phleger: I object.

The Examiner: I think that question calls for hearsay testimony and is not cross examination. The objection is sustained to that.

Mr. Phleger: And is not material, in addition.

The Examiner: Sustained on that ground also.

By Mr. Troy:

Q. Your company brought an injunction suit in the United States Court against the enforcement of the gas rates and, to be brief, in the second and final decision after the United States Supreme Court had overruled the previous decision the Judges found that during the three years the injunction was in effect, the first year you earned net 6.6 percent, the second year 7.5 percent, and the third year 8 percent on your investment in the gas properties; and later when the Judges came to fix the interest rate that your company should pay on that money you had collected, and including this interest, as I understand it, I have been informed that the attorney of the Railroad Commission asked the Court to fix the interest [1368] at 6 percent. Your own attorney objected to that and said it should be 5 percent, and then the Court later very graciously fixed it at 4 percent—4 percent. Can you explain that, Mr. Black?

Mr. Phleger: I object.

(Testimony of James B. Black.)

The Examiner: The objection is made upon the ground that it is not material and that it calls for the conclusion and opinion of the witness. I don't think that it is within the issues here. I don't believe it would be very helpful so I will sustain the objection.

Mr. Troy: All right, Mr. Chairman.

By Mr. Troy:

Q. Do you consider this agreement of a lease of your property to the City of San Francisco that your company drew up and is approved or by the Supervisors and Mayor Rossi and the Public Utilities Commission—do you consider that a—"Plan C", it is called, and then presented to Secretary Ickes and was rejected by him—Do you consider it a fair agreement? A. I do.

Mr. Phleger: I object to that upon the ground that this question and the whole line of questioning are not within the scope of the order made by the Securities and Exchange Commission, which permits Mr. Troy——

Mr. Troy (interposing): Well, Mr. Chairman,—— [1369]

Mr. Phleger (continuing): —to participate in these proceedings.

The Examiner: Sustained.

Mr. Troy: Mr. Chairman, my purpose in this is to show the unfairness in this agreement and the trickery of the company so as to prevent the City

of San Francisco from ever reducing electric rates, what they will be selling in competition with the company's gas, and in that way the company can keep up gas rates on the gas consumers of San Francisco. So you see it has a double effect.

Mr. Phleger: May I make this further suggestion?

The Examiner: The objection is sustained to your inquiry.

Mr. Troy: All right.

The Examiner: Do you want to make some further comment?

Mr. Phleger: Yes. I would like to make this further comment: That for the last half hour at least counsel has not asked a single material question. He has made various statements, argumentative in form, and expressing his own views——

Mr. Troy (interposing): Just like the attorney for the other side.

Mr. Phleger (continuing): —and I would make the observation that it would seem to me appropriate that the Examiner might direct that Mr. Troy place his statements and arguments in the form of a memorandum which might be made part of [1370] the record in this proceeding rather than stating them——

Mr. Troy (interposing): I can probably finish this——

Mr. Phleger (continuing): —in argumentative form as questions to this witness.

(Testimony of James B. Black.)

Mr. Troy: I haven't got much more to ask. I could probably have finished it if the gentleman hadn't made that long talk.

The Examiner: I appreciate the suggestion.

I have already suggested that to you, Mr. Troy, and I will reiterate it again in a few minutes. Would you mind letting me see how many more you have got there?

Mr. Troy: There is one, two, three and four and these (indicating).

The Examiner: Five questions?

Mr. Troy: Well, that I have already——

The Examiner (interposing): You have covered that?

Mr. Troy: Yes.

The Examiner: That leaves four.

By Mr. Troy:

Q. Mr. Black, did not your company enter into an agreement with certain oil companies and they with you that you could solicit their oil customers and they would not oppose your solicitation, and that then if you got the company or the customer away from the oil company that you, your company, would then buy additional gas in the oil fields equal in [1371] b.t.u.'s to the b.t.u.'s of oil that the oil company was selling to its customer here that you got?

A. I don't know. I am quite sure there are no such agreements in effect now.

(Testimony of James B. Black.)

Q. Well, Mr. —— not your secretary,——

The Examiner (interposing): Just a minute now! Let's not argue. The witness says he doesn't know and he doesn't believe any such contracts are in effect now. You heard his answer?

Mr. Troy: Yes.

The Examiner: All right.

Mr. Troy: It was in effect, Mr. Chairman, and testified to by their witness.

The Examiner: In some other proceeding? Not here?

Mr. Troy: Yes.

The Examiner: All right. Go ahead with the next question.

By Mr. Troy:

Q. Do you employ detectives in your organization? A. No.

Q. No detectives?

A. I don't know of any detectives.

Q. What?

A. I don't know of any detectives in our employ.

Q. Do you employ any men that you would call "spotters" [1372] or men to follow people, men to get information for you?

A. I don't know of them.

Q. You don't know?

A. I don't know of any, if they are so employed.

(Testimony of James B. Black.)

Q. Do you employ burglars? This is the burglars that burglarized my apartment and stole my books and data and papers relating to your company and the Market Street Railway.

The Examiner: When was this?

Mr. Troy: It has been going on for 30 years.

The Examiner: Do you know of anyone being employed for such purpose by your company?

The Witness: I do not.

The Examiner: Have you ever heard of anyone being employed by your company for such purpose?

The Witness: I have not.

The Examiner: If you are going to recite some history, I would rather not have it on the record unless you have something to support it. You have told us "off the record" about having difficulty with people going through your apartment.

Mr. Troy: And following me on the streets, too, wherever I go.

The Examiner: Any other questions of this witness?

By Mr. Troy:

Q. Mr. Black, does your company own the water works in the Town of Auburn, possibly the County Seat? [1373]

A. I think we do. We distribute water for domestic purposes in that area.

(Testimony of James B. Black.)

Q. You convey that water to the town in an open ditch, don't you?

A. Part way, yes. It is used for generating power, first.

Q. Yes. And that ditch also flows under dwellings and rooming houses and others in the town?

A. I doubt it. I don't know. I don't know the detail of it.

Q. How did you acquire that works and when?

A. I don't know.

Q. Is it not a fact, Mr. Black, that the water works in Auburn were owned by a resident of the town, and some time along 10 or 12 years ago he proposed to sell the works to the City and the City then accepted his offer and put up a bond issue for the people to vote upon, and when the election day came that your employees from the Sacramento Valley came up to Auburn and electioneered around the booths urging people to vote against it, and by that means you defeated the bond issue and then the person owning the works had to sell the works to you at your price?

A. I have no knowledge whatsoever of the facts that you recite.

Mr. Troy: Well, that will complete what I have.

[1374]

The Examiner: Fine. Thank you very much, Mr. Troy. I appreciate your participation in this proceeding and I think the Commission order would entitle you, if you desire, to present any evidence

(Testimony of James B. Black.)

for the record and to present your argument in writing, if you desire to do so.

Mr. Troy: I will be glad to do so.

The Examiner: You are a very prolific writer, you say, and I would like to have you present your argument in that manner, if you so desire.

Mr. Troy: Well, I don't say that I am a prolific writer. I generally try to be——

The Examiner (interposing): Perhaps that is my conclusion, but you have told us that you have written considerable manuscripts.

Mr. Troy: I generally try to be as brief as possible.

The Examiner: I appreciate that. You may file a written memorandum for the record, if you wish.

Mr. Troy: Thank you. Thank you, Mr. Black.

The Witness: You are welcome.

The Examiner: Do either of counsel have any further questions of this witness?

Mr. Phleger: No questions.

The Examiner: You may be excused, and I thank you for your attendance and your patience.

The Witness: Thank you. I enjoyed it very much. [1375]

(Witness excused.)

The Examiner: We will be in recess until 2:00 o'clock this afternoon.

(Whereupon at 12:45 p. m. a recess was taken until 2:00 p. m. of the same day.) [1375]

Afternoon Session

(Whereupon, pursuant to the taking of recess the hearing was resumed at 2:00 p. m.)

The Examiner: You may resume when you are ready.

Mr. Phleger: I offer in evidence as Applicant's Exhibit next in order Decision No. 28517 of the Railroad Commission of the State of California, dated January 20, 1936, in the matter of the application of the Great Western Power Company of California, and so forth, to transfer its properties to the Pacific Gas and Electric Company.

The Examiner: It will be received as Applicant's Exhibit No. 46.

(The document referred to above was marked Applicant's Exhibit No. 46, and was received in evidence.)

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 47 Decision No. 31354 of the Railroad Commission of the State of California, dated October 13, 1938, in the matter of the application of the San Joaquin Light and Power Corporation and the Pacific Gas and Electric Company for an order authorizing the Pacific Company to assume the

debts, liabilities, and obligations of the San Joaquin Corporation to distribute and transfer to Pacific Company its plants, properties and other assets.

The Examiner: It will be received in evidence and so [1377] marked.

(The document referred to was marked Applicant's Exhibit No. 47 and was received in evidence.)

Mr. Phleger: I offer in evidence as Applicant's Exhibit No. 48 Decision No. 31355 of the Railroad Commission of the State of California, dated October 13, 1938, in the matter of the application of Midland Counties Public Service Corporation and Pacific Gas and Electric Company for an order authorizing Pacific Company to assume all existing debts, liabilities, and obligations of Midland Corporation to persons other than Pacific Company, and authorizing Midland Corporation to distribute and transfer to Pacific Company the properties and assets of Midland Corporation.

The Examiner: It will be received in evidence and so marked.

(The document referred to was marked Applicant's Exhibit No. 48 and was received in evidence.)

Mr. Phleger: I would like the record to show that Applicant has produced, either in its amended and supplemental application or by way of exhibit,

all of the documents and material requested by the letter of Roger S. Foster, counsel to the Public Utilities Division, dated September 7, 1940.

The Examiner: Have you checked that, Miss Calkin?

Miss Calkin: Yes; that is correct.

Mr. Phleger: Having in mind the extent of the evidence [1378] already introduced, and the fact that Mr. Freeman and Mr. Fogarty are residents of New York and not available here, and believing that their testimony would be but supplementary and corroborative of the testimony already introduced by Applicant, Applicant rests at this time.

Should the Commission feel later that the testimony of Mr. Fogarty and Mr. Freeman should be had, why if that is communicated to us we will be glad to call them; otherwise we will rest at this time.

The Examiner: At the first portion of this hearing, I believe at the opening of the hearing on the first day, Mr. Phleger you made some motion with respect to the request for a Trial Examiner's findings and report. At that time I suggested that altho the rules of practice do not provide for the writing of such report in matters under the Public Utility Holding Company Act, that you might desire to make that motion at a later date, and asked that you defer it at that time.

In any event, if you desire to renew that motion it will have to be submitted to the Commission

which, if the Commission grants the motion, would instruct me to prepare such a report and, in that event, I would ask that upon your receiving notice that your motion, if it is presented, is granted, that you prepare a request for proposed findings, if you would be so kind as to do that.

Mr. Phleger: Yes. I assumed that after the closing of [1379] our case that counsel for the Commission has some testimony and evidence to introduce, and I intended following that, both to renew my motion with respect to an Examiner's report and give notice also of our request for special findings.

The Examiner: All right.

Have you any further testimony, Miss Calkin?

Miss Calkin: Yes. The Commission desires to call Mr. Charles Blyth as its witness.

The Examiner: Is Mr. Blyth here?

Whereupon—

CHARLES R. BLYTH

was produced as a witness for and on behalf of the Commission, and after being first duly sworn, was examined and testified as follows:

Direct Examination

By Miss Calkin:

Q. State your name, please?

A. Charles R. Blyth.

(Testimony of Charles R. Blyth.)

Q. Where do you reside, Mr. Blyth?

A. Burlingame, California.

Q. How long have you resided in California?

A. About 31 years.

Q. What is your business?

A. I am president of Blyth & Co., investment bankers.

The Examiner: A corporation? [1380]

The Witness: A corporation of California.

By Miss Calkin:

Q. Are you a principal stockholder of that company?

A. I am a stockholder. I think I am the largest stockholder.

Q. How long has the corporation of Blyth & Co. been in existence?

A. Well, there have been three stages, starting in 1914 with Blyth Witter & Co. which, as far as the active end of the business was concerned, was converted into a partnership in 1930. In, I think, about 1933 it was reincorporated as Blyth & Co., Inc.

Q. And that is the present style of the firm?

A. That is the present style.

Q. What is the business of Blyth & Co., Inc.?

A. Dealing in investment securities.

Q. Are you engaged in the underwriting business? A. Underwriting.

Q. Do you do a brokerage business?

(Testimony of Charles R. Blyth.)

A. We do no brokerage business.

Q. Mr. Blyth, how long have you personally been engaged in some phase of the investment banking business?

A. All during the period of Blyth & Co. and its predecessor, Blyth Witter & Co., and since 1906—from 1906 to 1914 before Blyth Witter & Co. was organized. [1381]

Q. Were your activities in that connection in the State of California? A. Yes, largely.

Q. Was Dean Witter of the present firm or corporation of Dean Witter & Co. the same Mr. Witter that was associated with you?

A. He is the same.

Q. When did either you individually or the company with which you have been associated first become interested in the financing of the Applicant?

A. It was when Mr. Frank Drum was president of the Pacific Gas and Electric Company; 1919, I believe, when we purchased at that time $5,000,000 par value preferred stock of the Pacific Gas and Electric Company.

Q. Were you acquainted with Mr. Drum?

A. Very intimately.

Q. When was the New York office of Blyth & Co. established—I believe you do have a New York office, do you not?

A. We do. I don't know—I am just guessing. I can't remember these figures. It has been in operation 15 years anyway.

(Testimony of Charles R. Blyth.)

Q. During the period 1930 to 1935 who was in charge of the New York office of Blyth & Co.?

A. A man by the name of Lloyd Gilmore opened the [1382] New York office originally, and was joined by George Leib, who originally was from the San Francisco office, in about 1933, I think.

Q. Is Mr. Leib an officer or director, or both, of Blyth & Co.?

A. Vice-president and director.

Q. Is Mr. Charles Mitchell now associated with your organization? A. He is.

Q. What is his position?

A. He is chairman of the Board of Directors.

Q. When did he become associated with Blyth & Co., approximately? A. 1935.

Q. What position does Mr. Bernard W. Ford occupy?

A. He is a vice-president and director, and his residence is in San Francisco.

Q. And Mr. Loring R. Hoover?

A. He was at one time a vice-president for, I would say, less than two years—I am not sure as to that time, but I would say less than two years—and he is president of the New York office.

Q. Did he occupy such position during 1935?

A. Yes.

Q. Is Mr. Roy Shurtleff an officer or director of [1383] Blyth & Co.?

A. Vice-president and director, with his residence in San Francisco.

(Testimony of Charles R. Blyth.)

Q. After the purchase of the preferred stock issue in 1914, I believe which you testified concerning, from the Applicant, what was the next piece of business that your firm had with the Applicant?

A. We individually bought $10,000,000 in five-year convertible notes. I think that was the next year——

Q. (interposing) Applicant's Exhibit No. 42, I believe it is, shows that Blyth & Co. purchased——

A. (interposing) 1920.

Q. (continuing) —five year, 7 per cent collateral trust gold notes in the amount of, par value, $7,765,000 in May of 1920, is that correct?

A. That is correct.

Q. And the next piece of business which your firm did for the Applicant——

A. (interposing) Next was in 1923. We participated in an issue of $10,000,000 five and one-half's, which was underwritten by a group headed by the National City Company.

Q. Was Mr. Drum still president of the company, Mr. Blyth, in 1923?

A. No. Mr. Drum had died and Mr. Creed had become president in the meantime. [1384]

Q. Can you explain the circumstances surrounding the National City Company getting the leadership of the 1921 issue?

A. I can only give you what my opinion is. I don't know whether it is accurate or not, but I

(Testimony of Charles R. Blyth.)

think that Mr. Creed was impressed with the size and potency of the National City Company and impressed with the experience and extraordinary ability of Mr. George Weeks, who at that time was head of the, that is, at that time was connected with the National City Company, but not in San Francisco; and although Mr. Creed discussed with me on two or three occasions this particular piece of financing, and I had discussed it with him on the theory that I was acting as an advisor more than as a competitor in a competitive bid, finally I found out, to my surprise, that he had closed the deal with Mr. Weeks and we were out.

Q. After you had purchased the gold notes issued by the Applicant in 1920 were you of the opinion that you might head the next financing of the Applicant?

A. I felt certain we would.

Q. Was Mr. Drum president in 1920 when you purchased the gold notes.

A. He was president.

Q. So you first did financing for the Applicant under the presidency of Mr. Drum? [1385]

A. Yes.

Q. And you did some under the presidency of Mr. Creed? A. Right.

Q. What happened from 1920 to 1931 relating to who headed the Applicant's financing?

A. In the latter part of 1923 a second issue of $10,000,000 was underwritten by the same group and we participated as before.

(Testimony of Charles R. Blyth.)

Do you want me to give you all the amounts from then on?

Q. No. Did you have a second position in all of Applicant's financing during the period that the National City Company headed the business?

A. I don't recall whether we had second position or not, but we had a 20 per cent here in the underwriting.

The Examiner: In all the business in which National City headed it?

The Witness: Yes.

By Miss Calkin:

Q. In other words, your participation——

A. (interposing) Carried right on through.

Q. Where is the main office of Blyth & Co. located, Mr. Blyth?

A. I don't know. We operate with two head offices—I think we are the only such company that does—and we have [1386] a head office in New York and head office in San Francisco.

Q. In what state is Blyth & Co. incorporated?

A. A California corporation.

Q. Have you maintained your residence in California consecutively? A. Continuously.

Q. Has Blyth & Co. ever headed any underwriting syndicates in connection with the Pacific Lighting Corporation financing?

A. Yes. We have handled all of their business. I can't give you the amounts or times, but we have

(Testimony of Charles R. Blyth.)

handled all of their business for the last five or six years.

Q. Does that apply to the financing of the subsidiaries of that company also? A. Yes.

Q. During that period was Mr. C. O. G. Miller connected with Pacific Lighting Corporation?

A. He was the head of it at all times.

Q. So you have been well acquainted with Mr. Miller over a period of years?

A. Very intimately.

Q. How many members of the Applicant's Board of Directors do you know personally?

A. I know them all.

Q. Over what period of years would you say you have [1387] known them?

A. I have known some of them nearly 30 years; some of them for a less time.

Q. During the time Mr. Creed was president of the company did you make any effort to get the leadership of the Applicant's financing?

A. I think our efforts at that time were more confined to being admitted into the group than to try to displace the National City Company. Originally we were not in the group that was formed by Mr. Weeks under Mr. Creed's sponsorship, but we were as aggressive as, we knew how to be and they eventually thought it was a good idea to take us in.

Q. What happened after Mr. Hockenbeamer became president in reference to your efforts to get the leadership of this business?

(Testimony of Charles R. Blyth.)

A. Mr. Hockenbeamer was completely immune to any attack that we made on him for that objective, although he was always very friendly and I had had a very pleasant relationship with him.

At least I afterwards found out that I wasn't able to get in as close a business association with him as Mr. Russell, of Lazard Freres & Co., who was a personal friend of his.

Q. And did Mr. Weeks represent the National City Company in connection with Applicant's financing up to the time that National City Company went out of business? [1388]

A. At the beginning he did, but not continuously, because he went to London to represent the National City Bank, as head of its London Office, and I think Mr. Russell more or less took over for the National City Company after Mr. Weeks went to England.

Q. Was it your opinion that after Mr. Weeks left that Mr. Creed and Mr. Hockenbeamer carried on negotiations with the National City Company through Mr. Russell? A. I think they did.

Q. Would you say that the National City Company was primarily responsible for the participation of your company in Applicant's financing during the time that company headed Applicant's underwriting?

A. I think it was the result of judgment of other members of the group. I have in mind Rollins particularly.

(Testimony of Charles R. Blyth.)

Q. Was your position in Applicant's financing improved in 1926 or 1927?

A. As far as percentage went to the underwriting it was 20 per cent in 1926, 16 per cent in 1927, 15 per cent in 1928, 20 per cent in 1930, and 22½ per cent in 1931.

Q. During all of those periods did you have second position in the business?

A. I can't remember whether we had second, or where we were. I don't remember that.

Q. During the time the National City Company headed [1389] Applicant's business did you, or any member of your organization, put forth any efforts to get the leadership of first position away from the National City Company?

A. No; we would not do that.

Q. When were you first apprised of the fact that the Applicant intended to do some financing in the early part of 1935?

A. My recollection is that Stanley Russell came into my office one day and informed me that he was about to close an underwriting deal with Mr. Hockenbeamer.

Q. Prior to that time you had never had any conversation with Mr. Hockenbeamer in regard to who should head that syndicate?

A. Prior to our knowledge that Mr. Russell had become syndicate head we had attempted, of course, to get that business.

Q. Had you talked to Mr. Hockenbeamer?

(Testimony of Charles R. Blyth.)

A. Certainly.

Q. Had you talked to any other members of the Board?

A. I suppose I had—I don't recall definitely—but I don't believe I left any stone unturned to get that business after the National City Company went out of business.

Q. Did the persons that you contacted in an effort to get the business indicate to you that the leadership of your firm would be more favorable to them than that of Lazard [1390] Freres & Co.?

A. Yes. Some of the directors, in informal talks that I had with them, at least indicated that their sympathies were directed toward our being the head of the syndicate.

Q. But you first learned that Mr. Russell would head the business from a conversation you had with Mr. Russell? A. Correct.

Q. After you knew that Mr. Hockenbeamer had decided to give the business to Lazard Freres & Co. did you persist in your efforts to get the leadership?

A. No, I did not.

Q. Did you talk to Mr. Frank Anderson, who was then a member of the Applicant's Board of Directors, regarding Blyth & Co.'s desire to head Applicant's prospective financing in the early part of 1935?

A. Does your question refer to the time after I had been informed by Mr. Russell that he had taken over?

(Testimony of Charles R. Blyth.)

Q. Yes.

A. No; because I would not have thought it proper, after Mr. Russell had been given the business, to try to unseat him.

Q. Do you recall having received a telegram from Mr. Leib, on about February 15, 1935, in which he stated in substance that he believed that Mr. Miller and Mr. Anderson would be "pleased and keenly interested in helping obtain the [1391] senior position of your firm in the business"?

A. That sounds very much like a wire that Mr. Leib would have sent. I presume he did.

Q. Did you ever instruct Mr. Leib to contact Mr. Fogarty in an effort to get him to use his influence on behalf of Blyth & Co.? A. Never.

Q. Do you recall Mr. Leib having wired you that he would advise you as soon as he had heard from Mr. Fogarty?

A. I am sure he did wire such because we had a great deal of correspondence when he was endeavoring to talk with Mr. Fogarty.

Q. Do you know to what extent Mr. Leib conferred with Mr. Fogarty in regard to the desire of Blyth & Co. to head Applicant's underwriting syndicate? A. No idea at all.

Q. Were you of the opinion at the time you learned that Lazard Freres & Co. would get the leadership of Applicant's business that Mr. Russell's only close contact with the Applicant was with Mr. Hockenbeamer and that Mr. Russell had no

(Testimony of Charles R. Blyth.)

friends on Applicant's Board except Mr. Hockenbeamer?

A. I think I was aware of that fact.

Q. What do you know about how Brown Harriman & Co. got second position in the March 1935 issue of the Applicant?

A. I don't know anything of direct knowledge about it. [1392]

Q. Did you put forth any effort to get second position in the March 1935 issue?

A. If we were able to we wanted it.

Q. Did you get second position on the west coast? A. We did.

Q. Did you share in the management fee?

A. We shared in the management fee, I think, as to the second issue under Lazard's sponsorship. I don't recall whether we did in the first one or not.

Q. Was your participation in the management fee arranged with Mr. Hockenbeamer or with Mr. Russell?

A. It was arranged with Mr. Russell. [1393]

Q. What do you know about Mr. Hoover being in Washington with Mr. Fogarty and other utility executives who were there in connection with the Rayburn Bill, which later became the Public Utility Holding Company Act of 1935?

A. I knew he went down to be of assistance, because we thought if we could help the utilities generally in a bill which we personally didn't think was so very wise, that we were only doing a natural

(Testimony of Charles R. Blyth.)

thing and it might prove ourselves of value to the public utility industry, which we were anxious to do.

Q. Was Mr. Hoover then engaged in attempting to get Mr. Fogarty to use his efforts on behalf of Blyth & Co. in respect to Applicant's financing?

A. Not to my knowledge.

Q. Did you ever tell Mr. Elsey, who was then a member of Applicant's Board, that since Blyth & Co. was the most important western underwriter doing business with his bank that you expected Mr. Elsey to help you get the leadership of Applicant's financing?

A. During which time was that?

Q. That was in February of 1935.

A. If that is before I was informed of Mr. Russell having taken it over, I would say I probably did approach him on that, but I wouldn't have approached him after Mr. Russell informed me that he had been given the heading of the [1394] business.

Q. What did Mr. Elsey do, if anything, to your knowledge in an effort to assist you in getting the leadership of that business?

A. I have no knowledge of what he did. I assume he tried to be helpful, but I have no knowledge of it.

Q. After the 1935 issue had been sold and distributed did you make any comments as to the man-

(Testimony of Charles R. Blyth.)

ner in which Lazard Freres & Co. had handled the syndicate and distributed the securities?

A. Probably we did. We generally make some adverse comments, I think, on almost every syndicate.

Q. Were you of the opinion that had Blyth & Co. headed that piece of business that the distribution of the securities would have been more satisfactory to the Applicant?

A. We were certain of it.

Q. Do you feel that more San Francisco dealers should have been included in the selling group of the March 1935 issue? A. We certainly did.

Q. Did you call that to the attention of the Applicant? A. No, not that I recall.

Q. What efforts did your firm make between March 1935 and June of that year to improve your position in Applicant's underwriting syndicate? [1395]

A. Will you state that again? I don't think I quite got the question.

The Examiner: Read the question.

(The question referred to was read by the reporter as above recorded.)

A. Any efforts that we made would have been made through Lazard Freres & Co. I don't recall what they were, but I am sure we made efforts to improve our position.

By Miss Calkin:

(Testimony of Charles R. Blyth.)

Q. But you did participate in the management fee in the June 1935 issue? A. Yes.

Q. And your negotiations in respect to participation were had with Mr. Russell?

A. Entirely.

Q. Do you recall the conversation regarding Applicant's financing which was had between yourself, Mr. Shurtleff and Mr. Leib, at which it was decided that Mr. Leib should cease his efforts to get Mr. Black to influence Mr. Hockenbeamer in respect to the leadership of Applicant's underwriting syndicates?

A. I don't definitely recall that, but it is quite likely that that was done. I think we were anxious not to have the waters muddied up in New York because we felt that the company's affairs were handled out here and its financing [1396] should be done out here.

Q. On or about September 6, 1935 did you write Mr. Hoover a letter in which you stated that you knew that he and Mr. Leib had "left no stone unturned in the North American Company to get their active cooperation in furthering our interest with Pacific Gas and Electric Company?"

A. I probably did.

Q. What did you mean by that statement?

A. Only this: That in the business I am engaged in it is our habit to contact everyone whom we think has any influence directly, or through friends, to divert financing in one way or another.

(Testimony of Charles R. Blyth.)

Q. You knew, of course, at that time that the North American Company was Applicant's largest stockholder and had two representatives on its Board of Directors? A. Yes.

Q. Do you recall having seen Mr. Black when he was in California the latter part of August or the first part of September of 1935?

A. I saw Mr. Black when he was out here—I can't say whether it was August 1935, but it was about that time.

Q. Was it prior to the time he became president of the Applicant? A. Yes; yes.

Q. What, if anything, did you say to him at that time [1397] regarding Blyth & Co.'s desire to head Applicant's financing?

A. I don't think I ever mentioned it.

Q. Did you write Mr. Leib a letter on April 14, 1935, in which you told him "nobody (referring to Mr. Black) could be nicer, more friendly or more anxious to help, but as I said before I think there is a North American policy which interferes with anyone of them going to the extreme limit that we would like"?

A. Yes. I am sure I wrote that.

Q. When you wrote this letter were you of the opinion that Mr. Black would like to have your firm replace Lazard Freres & Co. as syndicate manager?

A. I had no reason to believe that.

Q. What do you recall was said by Mr. Black

(Testimony of Charles R. Blyth.)

which would lead you to form the opinion that Mr. Black was very anxious to help.

A. Well, I think Mr. Black said exactly what any friend would have said under the circumstances. His remarks were probably assuring, but absolutely not binding. He was hopeful that we could get the business, but he didn't commit himself in any way about it.

Q. How long had you been acquainted with Mr. Black at that time?

A. We are talking about 1935 now?

Q. Yes,—before he became president of the Applicant. [1398]

A. Several years. I can't tell you exactly.

Q. Had your firm ever done any business for any of the companies with which Mr. Black was associated prior to his becoming president of the Applicant?

A. We had been associated with another firm in San Francisco who handled the San Joaquin Light & Power financing.

Q. Were you acquainted with Mr. Black at that time? A. No, I was not.

Q. After Mr. Hockenbeamer's death in November of 1935, and before the next financing by the Applicant in March of 1936, which piece of business was headed by your firm, what further was done by your company to get this business leadership?

(Testimony of Charles R. Blyth.)

A. I never said anything to Mr. Black directly about it, because I still considered it was Lazard Freres business. I am certain I had discussions with some of my close personal friends among the directors in the hope that something might lead to better things for Blyth & Co.; but they were purely informal and I never made any official approach to the company.

Q. Did you feel that with Mr. Hockenbeamer's death and Mr. Black's election as his successor that your leadership of the business was more probable?

A. I thought so. [1399]

Q. Did you ever discuss this matter with Mr. Chickering during this period? A. Yes.

Q. Mr. Chickering, I believe, has been attorney for your company for a period of time?

A. Yes; 25 years at least.

Q. Did he indicate to you whether or not, as a director of the Applicant, he was more favorable to the leadership of Blyth & Co. than that of Lazard Freres & Co. A. Yes, he did.

Q. Did he tell you that he and other directors had been dissatisfied from the beginning with Lazard Freres leadership?

A. He expressed his own individual opinion, but I don't recall that he ever mentioned how the other directors felt.

Q. Did he tell you that he had talked to Mr. Black about this matter? A. He did not.

(Testimony of Charles R. Blyth.)

Q. Did he tell you in substance that he would do everything in his power to get your firm the management of Applicant's financing?

A. I don't recall whether he did or not. I assume he did. It was rather in line with the expressions he made with reference to the handling of the company's business.

Q. What would you assign as a reason for Blyth & Co. succeeding Lazard Freres & Co. as syndicate manager of the [1400] $90,000,000 issue of March 1936?

A. I can only guess at that, because I have never been informed by any of the directors, or either by Mr. Black. I assume, from some of the remarks that were made to me by the directors, that they felt that a California organization, which they considered Blyth & Co. to be, would be more acceptable to them as their chief banking organization than somebody located in New York.

Q. Prior to the date of this issue Mr. Mitchell had become associated with your New York office, had he not? A. He had.

Q. Did Mr. Mitchell ever inform you that he had conferred with Harrison Williams regarding the desire of Blyth & Co. to manage the next piece of Applicant's financing?

A. I don't know whether he did or not, but I assume that he did.

Q. Mr. Blyth, I hand you, for the purpose of refreshing your recollection, certain correspondence

(Testimony of Charles R. Blyth.)

which purports to have been exchanged between yourself and Mr. Mitchell.

A. (Examining correspondence.) Yes. I remember that.

Q. In those letters Mr. Mitchell did advise you, did he not, that he had had a conference with Mr. Williams? A. Yes, he did.

Q. What did he tell you that Mr. Williams had said at the conference in regard to the leadership of underwriting [1401] syndicates by Blyth & Co.

A. I don't know what he said, but I am certain that Mr. Williams never committed himself in any way because he wasn't able to.

Q. Do you know Mr. Williams personally?

A. Yes.

Q. How long have you known him?

A. I think I first met him in 1928 or 1929.

Q. How close is your acquaintanceship or friendship with Mr. Williams?

A. Well, reasonably close. I wouldn't say I am an intimate friend of his.

Q. Has your firm had substantial participations in the financing of the North American Company or of its subsidiary companies?

A. We have had participation, but whether you call them substantial or not I don't know. They have been about the same in amount as various other organizations of our kind.

Q. Do you have what you consider a historical

(Testimony of Charles R. Blyth.)

interest in the financing of certain subsidiaries of the North American Company? A. No.

Q. Who has headed most of the syndicates in which you have participated in connection with the financing of the North American Company or its subsidiaries? [1402]

A. Dillon Read & Co.

Q. I believe you testified that you never talked to Mr. Black after he became president of the company in regard to your firm——

A. (interposing) I am very certain I never did.

Q. What was the first knowledge you had concerning the financing which was done in March of 1936?

A. Mr. Black invited me to come down to his office one day?

Q. When was that?

A. I don't remember, but it was some time preceding the time when this first issue of $90,000,000 was offered. He told me that they had been discussing among themselves their financial plans and determined to offer us the leadership of their underwriting if we wished it.

Q. Who made up the list of underwriters for the syndicate which purchased the $90,000,000 issue?

A. I think, in the first instance, I probably made them up, and then had a general discussion with Mr. Black, as we always do in any of these financial operations.

(Testimony of Charles R. Blyth.)

Q. Was there some discussion between you and Mr. Black as to who should participate in that syndicate, and the amount of their respective participations?

A. I don't recall whether the list was absolutely made up by myself or whether we had suggestions from the east, or [1403] whether Mr. Black was the one who first had the idea, but I am quite clear that we really were the ones who submitted the suggested list for his approval because that is what we always do do.

Q. What do you mean by "suggestions from the east"? A. From our New York office.

Q. Who suggested the name of Dillon Read & Co. as a member of that syndicate?

A. I think that our reason for including Dillon Read & Co. in that case was to get added banking strength behind the underwriting. After all, it was a pretty sizeable issue at that time. There hadn't been very many of that size put out. It was the first one we had put out for the Pacific Gas and Electric Company and we were naturally not going to take any chances, if a market slip-up took place, on being weak in the underwriting end of the thing.

Q. Who suggested the name of Dillon Read & Co. initially?

A. I don't know whether I did, or whether our New York office did. Somebody in our own organization did. Nobody else would.

(Testimony of Charles R. Blyth.)

Q. Who suggested the name of Kuhn Loeb & Co. and Morgan Stanley & Co.? A. Same thing.

Q. Who determined the participations of the various [1404] syndicate members?

A. We would in the first instance schedule a list and probably submitted it to Mr. Black. I don't recall definitely, but I assume we did that.

Q. Do you recall whether the names of any of the syndicate members were included at the suggestion of Mr. Black?

A. I think there were none. I think we had the list ourselves in the first instance and I think Mr. Black agreed that our list was satisfactory. That is the best recollection I have.

Q. Were there any houses included which had not been included under the leadership of Lazard Freres & Co.

A. Both Mr. Black and I felt it was highly desirable to have more local distributing power and we included four or five local firms in California.

Q. I hand you a copy of Applicant's Exhibit No. 42 and call your attention to the list of underwriters in the March 1936 issue. Will you state which of those houses, Mr. Blyth, are so-called California houses?

A. Schwabacher & Co., Brush, Slocumb & Co., William Cavalier & Co., Elworthy & Co., Mitchum Tully & Co. and Bankamerica Company. I think that is all.

Rollins was in before, I believe.

(Testimony of Charles R. Blyth.)

Q. Is E. H. Rollins & Sons a California house?

A. No. It is an eastern organization. [1405]

Q. Was there any understanding between you and other syndicate members as to whether or not the participation of Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. in this syndicate would give them a historical interest in the future financing of the Applicant?

A. It was understood it would not.

Q. You mean you gave them to understand——

A. (interposing) That they would not have any continuing interest, that there would not be any continuing interest in any of those three concerns you mentioned.

Q. Where were the negotiations with respect to the March 1936 issue carried on, Mr. Blyth?

A. San Francisco.

Q. Between whom?

A. Mr. Black and myself.

Q. What contracts, if any, did you have with any representatives of the North American Company in connection with the 1936 issue?

A. No contracts at all.

Q. You had never discussed with any representatives of the North American Company any phase of this piece of financing?

A. Never mentioned it to any of them.

Q. Do you know whether or not your representatives in New York carried on any negotiations

(Testimony of Charles R. Blyth.)

with representatives of [1406] the North American Company?

A. No, I don't know. I can't say. But I know of no reason why they should have.

Q. Did they communicate the results of any negotiations to you? A. No, they did not.

Q. You never had any discussion of any kind with Messrs. Williams, Fogarty or Freeman pertaining to the March 1936 financing of applicant?

A. None whatever.

Q. With respect to the April and October 1936—I believe it is May and October 1936 issues of the Applicant, which were purchased by an underwriting syndicate headed by your company, with whom did you carry on the negotiations in connection with those two issues?

A. Exactly the same as in the $90,000,000 issue.

Q. What conferences, if any, did you have with Messrs. Williams, Fogarty and Freeman prior to the sale of the securities by the Applicant to the syndicates headed by you?

A. No conversations or communications of any kind.

Q. Do you know whether or not your New York representatives carried on any negotiations in respect to the last two 1936 issues with representatives of the North American Company?

A. Not of my knowledge. I see no reason why they should have. [1407]

(Testimony of Charles R. Blyth.)

Q. Who made up the list of underwriters for these two issues?

A. They were made up in the first instance in our own office.

Q. Did you request Dillon Read & Co., Kuhn, Loeb & Co. and Morgan Stanley & Co. to participate in these issues? A. I did not.

Q. Did they ask that they be given a participation in these two pieces of business?

A. They did not because the understanding was in the $90,000,000 issue that that didn't form any precedent.

Q. In connection with the March 1936 issue did you receive any request from any representative of the North American Company to include Dillon Read & Co. in the syndicate?

A. No request at all.

Q. Why were these three houses not requested to participate in the last two issues in 1936?

A. The reason why they were participating in the $90,000,000 issue was to give added strength to the underwriting. In the subsequent issues there was no such need, and they did not contribute any distributing strength.

Q. With whom did you carry on negotiations relative to the private placement of the $15,000,000 bond issue which was sold in February of 1938?

A. Mr. Black. [1408]

Q. Did you have any communications with any

(Testimony of Charles R. Blyth.)

representatives of the North American Company in respect to that issue? A. None whatever.

Q. Is there any understanding between you and Mr. Black as to the management of future financing by the Applicant? A. None at all.

Q. Who, in your opinion, was responsible for the selection of Blyth & Co. to head the March 1936 syndicate?

A. I would imagine the Executive Committee of the Pacific Gas and Electric Company.

Q. Have you at any time, in connection with Applicant's financing since 1936, carried on any negotiations in respect thereto with any representatives of the North American Company?

A. None whatsoever.

Q. During the period that Lazard Freres & Co. headed the business who carried on the negotiations with the Applicant?

A. I suppose Mr. Russell did. As far as I knew he did.

Q. You had no negotiations with Mr. Hockenbeamer in 1935? A. No.

Q. You don't know where those negotiations were carried on?

A. I only know Mr. Russell was out here each time and I assume that they were carried on here.

[1409]

Q. And you have no knowledge of your New York office having carried on any negotiations with respect to the issuance of the securities, and the

(Testimony of Charles R. Blyth.)

price, the spread and similar matters with representatives of the North American Company?

A. I am sure they never did.

Miss Calkin: I think that is all.

The Examiner: Mr. Phleger?

Mr. Phleger: No questions.

The Examiner: Mr. Troy, do you want to ask this witness any questions?

Mr. Troy: Well, I couldn't hear what he was saying, what the questions were. I don't know anything about what he was testifying to.

The Examiner: This is Mr. Blyth, who is head of the underwriting house that has been handling a number of the issues of the Pacific Gas and Electric Company, the Applicant here.

Mr. Troy: Yes. Is it he that Mr. Chickering testified to that he wanted to get the underwriting for Mr. Blyth when it was being given to that French firm in New York?

The Examiner: That is right.

Mr. Troy: I have known of the firm of Blyth & Co. for many years.

Have you any document that I could look over from which [1410] I might ask questions? I didn't hear, couldn't hear any of his testimony.

The Examiner: There have been no documents offered in connection with Mr. Blyth's testimony.

Mr. Troy: I suppose it was simply in connection with the underwriting?

The Examiner: That is right.

(Testimony of Charles R. Blyth.)

Cross Examination

By Mr. Troy:

Q. Mr. Blyth, you may be able to give some information on something that puzzles me. When you float an issue of stock or bonds it is frequently stated that you are going to stabilize the issue.

A. Yes.

Q. What does that mean?

A. If you are dealing in any commodity and you throw a large amount of it on the market you will depress the market below the point which it normally should go—whether it is apples, potatoes, bonds or shares of stock—and you need some support in the market to balance that load until it can be distributed through the consumers.

Q. That is to say, you buy stock that may be offered.

A. If some is offered you would buy it.

Q. You may sell at times? A. Yes. [1411]

Q. Or you may be both on the buying and selling end? A. Right.

Q. And that is what is commonly called "rigging the market"?

A. "Rigging the market" is where you attempt to accumulate a certain block of securities to raise the price and sell out to the unsuspecting public and thereby get an improper profit.

But stabilizing the market is simply to prevent a deluge of any commodity going on the market and

(Testimony of Charles R. Blyth.)

improperly depressing it. Everybody is protected by that procedure as against being harmed, which is the case in the so-called "market rigging".

Q. And then——

Mr. Phleger (interposing): Just a moment. This is all very interesting, but we have got to pay for this record, and I assume everybody's time is worth something, so I suggest that this line of questioning is absolutely immaterial and irrelevant, not to say incompetent, and not within the order of the Commission, and that it might very well be carried on after our adjournment.

The Examiner: Yes.

By Mr. Troy:

Q. Take, for instance——

The Examiner: Just a moment. Mr. Troy, you heard the objection, did you not? [1412]

Mr. Troy: No.

The Examiner: An objection was made similar to the one made previously to certain questions you propounded this morning; that is, that this may be interesting to you, but it is not within the issues of this proceeding, nor within the authority of the order the Commission entered permitting you to participate. Unless your questions are within the issues of this proceeding, and within the purview of the order, I would have to sustain any objections to this line of inquiry.

(Testimony of Charles R. Blyth.)

Mr. Phleger has been kind enough to suggest that you might pursue this inquiry of Mr. Blyth at another time and not as a part of this record.

The Witness: I don't agree about the later discussion.

Mr. Troy: Has Mr. Phleger the right to ask questions that are not pertinent to the inquiry, or to suggest testimony to the witness?

The Examiner: I think that is another issue also. I think if he asks questions that are improper, and an appropriate objection is made, the objection would be sustained if I could see it that way.

Mr. Troy: If he asks questions in a way that is suggesting the testimony to the witness?

The Examiner: I understand leading questions, I suppose, as sometimes called, are likewise objectionable and if there [1413] is an objection made the objection would be sustained and the question would probably be reframed.

Mr. Troy: Hereafter I will have to watch him and object and try to keep the record straight.

The Examiner: All right. That will be fine.

If there are no further questions you may be excused, Mr. Blyth. Thank you.

(Witness excused.)

The Examiner: Have you any further testimony on behalf of the Commission?

Miss Calkin: Not at this time, Mr. Examiner. I intend to confer with my superiors in Washington in regard to Mr. Fogarty and Mr. Freeman, but I understand that if the Commission or the staff there feels it is desirable to have the testimony of those witnesses that they will be produced by the Applicant.

Is that correct?

Mr. Phleger: Well, I might state our position in this way: We believe that all of the issues made by our application have been very fully explored and that any testimony which might be produced hereafter would be merely cumulative and corroborative and it is, therefore, our desire that the matter be now submitted.

If the Commission should desire that additional testimony be had, of course, the matter can be set down for further [1414] hearing.

If that is done it is our desire, which I ask that the record show, that those further proceedings be held before the Examiner who has heard the testimony and evidence up to this time. If such hearings are held in the east it would be our desire that the Examiner go there to hear the testimony, or if that were not possible that the testimony of the eastern witnesses, if such testimony is taken, be taken by way of deposition and incorporated in this record so that the Examiner who has heard the evidence to date might make a report upon all of the evidence.

It is also our desire, in the event that, on reviewing the record, the Commission should have any hesitancy about granting that there be an Examiner's report, if the Applicant is so advised we would like to have an opportunity thereafter to argue the matter before the Commission.

The Examiner: I understand, as far as Miss Calkin's statement is concerned, that the Applicant would have no objection to calling these other two New York directors of the company as its witnesses, rather than Commission witnesses, if the Commission feels that their testimony is desirable or necessary.

Mr. Phleger: If that is convenient to the Commission we would be glad to do that.

The Examiner: The rest of your statement is quite clear [1415] as to what you desire.

I assume, then, that you will be informed from Washington about what the Commission's desires are and at that time you can elaborate upon, if you want to, this statement and renew your motion that we have previously discussed, and the Commission will issue its order.

Whether or not the Commission is going to grant your application before they act upon the rest of your motion, to wit, the preparation of the Trial Examiner's findings and report, I don't know; but they will consider the record as it appears before them, or is presented by the staff of the Public Utilities Division when they consider your motion. If they have any questions they will ask for the

entire record and they can examine such portions of it as may appear appropriate before acting on your request and motion.

You will be informed, I am sure, of whatever they determine is proper to be done and whatever steps are necessary to protect the Applicant's rights.

Under those circumstances I presume the hearing should be continued, not closed, to an indefinite date and before there is any resumption of the hearing adequate notice will be given to all parties of the time and place in a reasonable time so that they can accommodate themselves to the time and place where it is directed to be resumed.

Mr. Phleger: I take it that our time in which to make [1416] various requests and motions, in accordance with the rules, will not be deemed to start running until the case is officially submitted and we are so advised?

Miss Calkin: Not until the record is closed.

The Examiner: That time will not begin to run until the hearing is closed. Thereafter, I am satisfied, from my experience with the Commission, that they will not preclude you from making any appearance, or making motions that you desire even though the time may have elapsed.

Mr. Phleger: I am referring particularly to the request for special findings which must be made within five days.

The Examiner: That time will not begin to run

until the hearing is closed and you will be notified before that occurs.

I should also like the record to show that Mr. Rowell, Attorney for the Railroad Commission of the State of California, who made a statement at the opening session of this hearing, has been present at each successive session and a regular attendant at these proceedings.

The hearing is continued to an indefinite date to be resumed upon order of the Commission.

(Whereupon, at 3:10 o'clock p. m., the hearing in the above-entitled matter was continued subject to be resumed on order of the Commission.) [1417]

Proceedings

The Examiner: This is the hearing in the matter of the application of Pacific Gas and Electric Company and others under Section 2-A-8 and 3-A-1 and 2 of the Public Utility Holding Company Act of 1935.

Prior sessions of this hearing have been held in San Francisco, and pursuant to order of the Securities & Exchange Commission, the hearing is to be resumed here today for the purpose of taking further testimony.

The reporter has noted the appearances, I believe.

If you are ready to proceed, you may call your next witness, Mr. Phleger.

Mr. Phleger: Mr. Fogarty.

Whereupon:

JAMES F. FOGARTY

called as a witness by and on behalf of the Applicant, being first duly sworn, was examined and testified as follows:

Mr. Phleger: I think it might be desirable to have the record show I have handed the Examiner and counsel for the Commission a memorandum pointing out certain typographical errors in the transcript which we ask to be corrected as indicated.

The Examiner: Unless there is any objection on the part of counsel for the Commission, the request will be granted. I am already familiar with some of them, and they [1419] are errors more or less obvious.

Direct Examination

By Mr. Phleger:

Q. Mr. Fogarty, will you give for the record your full name and residence.

A. James F. Fogarty, 106 Brixton Road, Garden City, Long Island.

Q. What is your occupation?

A. I am Chairman of the Executive and Finance Committee of the North American Company.

Q. How long have you been connected with the North American Company?

A. Since November, 1902.

Q. Will you review briefly the various capacities in which you have served in the North American Company.

(Testimony of James F. Fogarty.)

A. I entered the employ of North American Company as a stenographer, become assistant secretary, assistant treasurer, secretary, vice-president, president, and Chairman of the Executive and Finance Committee.

Q. What position did you hold in 1925?

A. Vice-President.

Q. And in 1930? A. Vice-President.

Q. When did you become president?

A. January, 1934. [1420]

Q. How long did you occupy the position of president?

A. From January, 1934 until November 1, 1939.

Q. Is it correct to say that almost your entire business life has been with the North American Company? A. It is.

Q. What other directorships and affiliations, business affiliations, have you?

A. I am director of North American Light & Power Company, the Wisconsin Electric Power Company, North American Utility Securities Corporation, West Kentucky Coal Company, the Detroit Edison and Pacific Gas and Electric Company.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. In 1934.

Q. I call your attention to Applicant's Exhibit 16, Mr. Fogarty, and by reference to that exhibit can you give the date of your election as a director of the Pacific Gas and Electric Company.

(Testimony of James Fogarty.)

A. Yes. I said 1934; that should have been 1935. According to this record I was elected a director on December 18, 1935.

Q. And have continued as a director ever since?

A. That is correct.

Q. Did you know Mr. F. T. Elsey in his lifetime?

A. I met Mr. Elsey once when I was in San Francisco. [1421]

Q. Do you know Henry D. Nichols?

A. I do not.

Q. Did you know W. H. Crocker in his lifetime?

A. I met Mr. Crocker once or twice in San Francisco.

Q. Never met him in New York, did you?

A. No.

Q. Were your contacts with Mr. W. H. Crocker or Mr. Elsey of a business nature?

A. It is my recollection that my meeting with Mr. Elsey took place at an Executive Committee meeting of Pacific Gas and Electric Company which was held at a time at which I happened to be in San Francisco and I was invited to sit in at that meeting. I had no other contact with him. And I met Mr. Crocker outside of the office of the Pacific Gas and Electric Company on the one or two occasions when I did meet him.

Q. Did you ever discuss P. G. & E. affairs with him? A. Did not.

(Testimony of James Fogarty.)

Q. Did you ever discuss P. G. & E. affairs with Mr. Elsey? A. No, I did not.

Q. Do you know W. W. Crocker?

A. I do.

Q. What were the circumstances under which you became acquainted with him?

A. I met Mr. W. W. Crocker when I was a guest at [1422] Bohemian Grove.

Q. Did you ever have any business contact or business relationship with him?

A. I have not.

Q. Did you ever discuss company business with him? A. I have not.

Mr. Phleger: I will make a statement for the record the Bohemian Grove is a grove of redwood trees located on the Russian River about 75 miles north of San Francisco near the ocean. It is the property of the Bohemian Club, which is a social club in San Francisco. Each year in approximately the last two weeks of July an encampment is held there, at which time the members of the Club, both resident and non-resident, and guests invited, hold an encampment which is marked by various intellectual, artistic, and other entertainment.

The Examiner: You are a member of that organization, too, Mr. Phleger, I understand?

Mr. Phleger: I am. I think most every one in San Francisco is.

The Examiner: Every one that can be.

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(Testimony of James Fogarty.)

By Mr. Phleger:

Q. Who is Mr. Gruhl?

A. At the time of his death in January, 1933, Mr. Gruhl was president of the North American Company.

Q. Who is Mr. Dame? [1423]

A. At the time of his death in December, 1933 Mr. Dame was president of the North American Company.

Q. He had succeeded Mr. Gruhl?

A. Yes. He had been president and was followed by Mr. Gruhl as president. At the time Mr. Gruhl became president, Mr. Dame became Chairman of the Board. Upon Mr. Gruhl's death Mr. Dame resumed the office of president.

Q. You succeeded to the presidency upon the death of Mr. Dame? A. I did.

Q. Who is Mr. Doolittle?

A. Mr. Doolittle was Vice-President of the North American Company.

Q. Is he now living? A. Yes.

Q. Is he connected with the North American Company?

A. No, not in any official capacity.

Q. He resigned from active service?

A. Yes.

Q. About when? A. 1933.

Q. Who is Herbert C. Freeman?

A. He is Vice-President of North American Company.

Q. And is at this time? A. Yes. [1424]

(Testimony of James Fogarty.)

Q. Do you know Silas H. Palmer?

A. I do not.

Q. Did you know J. J. O'Brien in his lifetime?

A. I did.

Q. Who is he?

A. He was president of Standard Gas & Electric Company.

Q. Does your company have any business or other connections with the Standard Gas & Electric Company?

A. No, except that some of our Wisconsin operating subsidiaries may have power interchanges.

Q. Your company never has engaged in any joint venture or otherwise with the Standard Gas & Electric Company? A. It has not. [1425]

Q. It has no understanding or arrangement with respect to pooling of voting interests in companies in which they may have stock holdings?

A. It has not.

Q. Did you ever discuss Pacific Gas & Electric affairs with Mr. O'Brien?

A. I did not. I might say for the purpose of the record that I met Mr. O'Brien two or three times.

Q. And who is A. E. Wishon?

A. He was president of—vice president of San *Joquin* Light & Power Corporation, which was a subsidiary of Western Power Corporation at the time the North American Company acquired control of Western Power Corporation in the latter part of 1925.

(Testimony of James Fogarty.)

Q. Do you know Charles K. McIntosh?

A. I do not.

Q. Never met him? A. No.

Q. Did you ever know Frank B. Anderson, in his life time? A. I did not.

Q. Never met him? A. No.

Q. Do you know Mr. Allen L. Chickering?

A. I do. [1426]

Q. How long have you known him?

A. Perhaps four or five years.

Q. What has been the extent of your contacts with him?

A. I met him perhaps three or four times in the course of that period.

Q. Were those business meetings?

A. No, except to the extent of my meeting him at the Executive Committee meetings of the Gas & Electric Company, to which I referred you before, might have been business meetings.

Q. The other contacts have been purely social, have they? A. Yes.

Q. Do you know Norman B. Livermore?

A. I do not.

Q. Have you ever met him?

A. Not to the best of my recollection.

Q. Do you know John D. McKee?

A. No.

Q. Ever met him?

A. I do not recall that I have.

Q. Do you know Mr. C. O. G. Miller?

(Testimony of James Fogarty.)

A. I do.

Q. How long have you known Mr. Miller?

[1427]

A. Since some time after the North American Company acquired the interest in Pacific Gas & Electric Company.

Q. That would be some time after 1930?

A. That's right.

Q. State what the extent of your contacts with Mr. Miller have been?

A. I have met Mr. Miller on two or three occasions, perhaps, in New York, and I believe he was at the meeting of the Executive Committee at the Pacific Gas & Electric Company, to which I referred. My other meetings with him were while at Bohemian Grove, and on my return from the Grove to San Francisco, I stopped in to talk with him on two or three occasions, perhaps.

Q. Except for the one incident when you met Mr. Miller at the meeting of the Executive Committee in San Francisco, have your meetings with Mr. Miller been social? A. Yes.

Q. And at those meetings did you discuss business affairs, including P. G. & E.?

A. No, I do not recall that I ever did.

Q. Do you know Mr. D. H. Foote?

A. Yes.

Q. How long have you known him?

A. I met him first some time after the North

(Testimony of James Fogarty.)

American Company acquired interest in the Pacific Gas & Electric [1428] Company in 1930.

Q. What was the extent of your contacts with him?

A. Very few and very brief, perhaps two or three times, for a few minutes at a time, simply because I happened to be in the office of the Pacific Gas & Electric Company.

Q. Purely personal, were they?

A. Yes, and on a couple of occasions I had lunch with a number of the officers of the Pacific Gas & Electric Company, including Mr. Foote.

Q. Did you ever discuss business matters with him?

A. Well, at those luncheons, some matters of the Pacific Gas & Electric Company were discussed.

Q. In a formal way?

A. No, entirely informally.

Q. Cursory discussion? A. Yes.

Q. Do you know Mr. Phil M. Downing?

A. I do.

Q. When did you first meet him?

A. Some time after the North American Company acquired its interest in the Pacific Gas & Electric Company in 1930.

Q. State the extent of your contacts with Mr. Downing.

A. I have seen Mr. Downing in New York perhaps two or three times and stopped in a few minutes while he was in [1429] the East, and per-

(Testimony of James Fogarty.)

haps two or three other times I saw him in the office of the Pacific Gas & Electric Company in San Francisco.

Q. Would you describe your meetings with him as social rather than business?

A. When I was in the office of the company in San Francisco I stopped in to talk with him and we discussed some general matters of the company. His purpose, when I saw him in New York, the occasion for that was his merely dropping into the office for a few minutes when he happened to be here.

Q. The talks which you have just referred to with Mr. Downing were for the purpose of your obtaining information, were they, about the company? A. Yes.

Q. You did not discuss company policy and your attitude with respect to matters then under consideration by the Pacific Gas & Electric Company?

A. No, I did not.

Q. Did you make any requests or suggestions to him as to what the policy or action of the Pacific Gas & Electric Company should be?

A. I did not.

Q. Do you know Mr. John P. Coghlan?

A. I do. [1430]

Q. How long have you known him?

A. I met Mr. Coghlan first some time since 1930.

Q. What has the extent of your contacts with

(Testimony of James Fogarty.)

him, what has been the extent of your contacts with him?

A. About the same as those I described were my contacts with Mr. Downing.

Q. A few times in New York when he dropped in socially, and when you were in San Francisco and you dropped in and talked with him?

A. I did.

Q. Have you ever suggested the name of any director of the Pacific Gas & Electric Company for election by it? A. I have not.

Q. Did you ever participate in the election of any director of the Pacific Gas & Electric Company? A. I have not.

Q. Have you ever suggested employment by the Pacific Gas & Electric Company of any individual?

A. I have not.

Q. How many meetings of the Board of the Pacific Gas & Electric Company have you attended?

A. None.

Q. You have mentioned already your presence at a meeting of the Executive Committee of the company. Will you state the circumstances under which that took place? [1431]

A. I happened to be in the office of the company in San Francisco on the day on which the Executive Committee was to meet. So Mr. Black invited me to sit in at the meeting.

Q. What was the extent of your participation in that meeting? A. None.

(Testimony of James Fogarty.)

Q. Simply sat there and——

A. Listened to what went on.

Q. ——the discussion that went on?

A. Yes.

Q. Were your views as to the matters which were considered at that meeting requested?

A. They were not.

Q. Could you fix the date of that meeting?

A. It may have been in 1936 or '37.

The Examiner: Was that your question, Mr. Pheleger? Did you say, "Could you fix it" or "did you fix it"?

Mr. Phleger: I said, "Could you fix it".

By Mr. Phleger:

Q. Have you ever made a business trip to California for the purpose of obtaining information respecting the Pacific Gas & Electric Company?

A. I did. [1432]

Q. When was that? A. 1936.

Q. Other than that occasion, have you ever made a business trip to California to either talk with the officers or investigate its affairs?

A. Not for that purpose.

Q. Can you state the extent of your activity in 1936 when you made the trip which you just mentioned?

A. I spent a couple of days in San Francisco, then went up to Bohemian Grove, returned to San Francisco for a day or two, returned to the Grove

(Testimony of James Fogarty.)

for the following week-end, and I believe I spent the Monday following the close of the Grove encampment in San Francisco.

Q. It would be fair to say, then, that the extent of your investigation at that time amounted to about three days' time?

A. I wouldn't say my trip was made for the purpose of any investigation. During the days in which I was in San Francisco, I talked with Mr. Black and other officers of the Pacific Gas & Electric Company, and also visited with some other men in San Francisco whom I happened to know.

Q. That was the first time that you were in San Francisco following your election as President of the North American Company? A. Yes.

[1433]

Q. And as a director of the Pacific Gas & Electric Company, was it not? A. It was.

Q. And was for the purpose of familiarizing yourself with the company, and to meet some of its officers and directors? A. That is correct.

Q. Do you recall the occasion of the acquisition by the North American Company of stock control of Western Power Corporation? A. I do.

Q. When did that take place?

A. In September or October, 1925.

Q. What form did that transaction take?

A. An offer of common stock of North American Company for common stock of Western Power Corporation.

(Testimony of James Fogarty.)

Q. At the time of that transaction did Western Power Corporation, have stock control of the Western Power Company and San Joaquin Light & Power Corporation?

A. It did, also Midland Counties.

Q. Midland Counties. Following the acquisition by North American of control of Western Power Corporation, as you have just testified to, did the North American Company maintain close contact and supervision over the affairs of that company and its subsidiaries? [1434] O. It did.

Q. Can you describe——

A. May I say that it maintained a close contact with the management of those companies, followed its operations, but did not supervise the management as such.

Q. What contact or supervision did the North American Company have, or give, over the affairs of those companies?

A. The North American Company arranged the financing of those companies.

Q. Where were the issues of bonds that those companies sold in that period, sold?

A. By California bankers, Blythe-Wedder & Company, and Pierce, Fair & Company.

Q. Did the North American Company participate in the negotiations covering the sale of those securities? A. It did.

Q. And were those negotiations held here in New York?

(Testimony of James Fogarty.)

A. They were concluded in New York. The discussions leading up to them were begun by me in California.

Q. Concluded in New York, however, in the North American offices? A. That is correct.

Q. Did the North American Company extend credit to the operating subsidiaries of Western Power Corporation?

A. It did, through Western Power Corporation.

[1435]

Q. Can you state the period and extent of that financial accommodation?

A. North American acquired, as I stated, the control of Western Power Corporation in September or October of 1925, and disposed—and Western Power Corporation disposed of its interests in those operating subsidiaries in June, 1930. During that period the advances to the operating subsidiaries of the Western Power amounted to probably $19,000,000.

Q. That advance was liquidated, was it not, in connection with the acquisition by Pacific Gas & Electric Company in 1930 of the securities of the Great Western and San Joaquin Company owned by Western Power Corporation, were they not?

A. That is correct.

Q. What, if anything, did the North American Company have to do with the budget of the operating companies during the period 1925 to 1930?

(Testimony of James Fogarty.)

A. North American Company, officers and organization, went over the budget of those companies with the officers of those companies.

Q. They were submitted to the North American Company before they were adopted or put into effect, were they not?

A. Yes. All principal items were discussed.

Q. Now, with respect to construction, were proposals [1436] for the construction of plants and properties, where they were large in amounts, submitted to North American before they were undertaken by the operating subsidiaries?

A. You mean proposals to build a plant and make the expenditure?

Q. Yes. A. Yes.

Q. Was the North American Company consulted by the operating subsidiaries with respect to rate matters and changes during that period?

A. Yes; those matters were discussed with the officers of the North American Company.

Q. Before they were—— A. Yes.

Q. —put into effect? A. Yes.

Q. What, if anything——

A. That is, those of importance. There may have been minor adjustments that——

Q. What consultation or discussion, if any, were had between the operating subsidiaries and the North American Company during this period respecting sales?

A. Sales of electric energy, do you mean?

(Testimony of James Fogarty.)

Q. Yes, sales promotion methods, I am referring to.

A. I do not recall any particular sales promotion [1437] programs that were proposed by those companies, but their general procedure with respect to increasing the business of the company, advertising, activities looking toward that, were discussed in general.

Q. Were these operating companies given the benefit of North American knowledge and advice with respect to sales activities generally in the industry?

A. Yes; it had been our policy to make available to all our subsidiary companies the experience and knowledge of our other subsidiaries.

Q. And that was done in this instance?

A. It was.

Q. Were these operating utilities given the benefit of group purchasing contracts of the North American Company?

A. At that time there was in effect what we referred to as a quantity discount contract, under which the operating subsidiaries made their own purchases, and those purchases were applied in the aggregate for the purpose of determining discounts, and operating subsidiaries received the benefit of the discounts based on the aggregate purchases.

Q. Did the Great Western and San Joaquin

(Testimony of James Fogarty.)

have the benefit, and avail themselves of, the procedure you mentioned? A. They did.

Q. Do you know whether or not the officers of these operating subsidiaries were members of and participated in [1438] the activities of what is known as the Station Advisory Committee?

A. I believe members of their engineering organization did participate in the activities of the Station Advisory Committee.

Q. What is the Station Advisory Committee?

A. That is a committee consisting of technical men in the organizations of the various subsidiary companies who met for the purpose of discussing and exchanging views with respect to operating on technical matters.

Q. Do you know whether or not these operating subsidiaries during this period were given the benefit of accounting advice by North American?

A. I do not recall any specific instance, but I am sure that if any questions arose in their minds, that the knowledge and experience of our organization would have been available to them.

Q. Is it fair to say that the relation between North American Company and Great Western Power Company and the San Joaquin Light & Power Corporation and Midland Counties Company during this period were substantially the same as the relationship between North American Company and its other operating subsidiaries?

(Testimony of James Fogarty.)

A. It is.

Q. You have testified and the record shows that some [1439] time in the first part of 1930 the Pacific Gas & Electric Company purchased from North American Company its holdings in these operating subsidiaries. Do you know whether or not this relationship between North American and these operating subsidiaries that you have just testified, terminated then? A. It did.

Q. Do you know Mr. James B. Black?

A. I do.

Q. How long have you known him?

A. Since about the time of the negotiations for acquisition of control of Western Power Corporation in the latter part of 1925.

Q. State what your subsequent contacts have been with Mr. Black?

A. I saw Mr. Black, spent sometime with him in the late Summer of 1926, when I was in San Francisco to look into the financing situation of the Western Power Corporation subsidiaries. The following year Mr. Black came to New York to become Vice President of the North American Company, and remained in that capacity until November or December, 1935, when he resigned to become President of Pacific Gas & Electric Company.

Q. So that Mr. Black was an officer of the North American Company from 1927 to 1935? [1440]

A. That is correct.

(Testimony of James Fogarty.)

Q. A period of approximately seven years.

A. Or eight.

Q. What position did Mr. Black hold in the North American Company during that period?

A. Vice President.

Q. Was he a member of the Board of Directors of the North American Company?

A. He was not.

Q. Was he a member of the Executive or Finance Committee of the North American Company? A. He was not.

Q. What were Mr. Black's duties with North American when he came on and joined it in 1927?

A. One of his principal duties was to follow the operations of the subsidiaries of Western Power Corporation. In addition to that, he participated in the general discussions and relations with other operating subsidiaries.

Q. By the way, during the period 1925-1930 when these companies were operating subsidiaries of North American, was any charge made to them for the services and advice that was rendered to them by North American?

A. We allocated to our subsidiary companies a part of the costs of North American Company and some of the officers of the North American Company drew salaries as [1441] officers of operating subsidiary companies, which salaries they turned into the North American.

(Testimony of James Fogarty.)

Q. And that practice was followed with respect to these subsidiaries up until the time of the sale of the securities in 1930, was it not?

A. I believe it was.

Q. Do you know at whose suggestion it was that Mr. Black came on to New York and joined the North American Company?

A. I believe it was at the suggestion of Mr. Dame, who was the President of the North American Company.

Q. It was not at your suggestion?

A. No.

Q. State what you know of the negotiations between North American Company and the Pacific Gas & Electric Company which resulted in the acquisition by Pacific Gas & Electric Company of stock holdings of North American Company in these operating subsidiaries.

A. I did not participate in those negotiations, but I can state in general that they were conducted by Mr. Black, Vice President of the North American Company, in consultation with, and reporting to Mr. Dame and Mr. Gruhl; Mr. Black's negotiations being conducted with Mr. Hockenbeamer, who was then their Vice President.

Q. Were parts of those negotiations communicated [1442] to you currently as they progressed?

A. Yes, from time to time Mr. Dame and Mr. Gruhl would tell me of the progress of the negotiations which Mr. Black was conducting in Cali-

(Testimony of James Fogarty.)

fornia with Mr. Hockenbeamer, and on occasions when Mr. Black was in New York I participated in discussions with him and Mr. Dame and Mr. Gruhl concerning those negotiations.

Q. Was there reported to you, or were you informed of any arrangement or understanding made in behalf of North American with the Pacific Gas & Electric Company respecting the position which North American Company would occupy following the sale of these securities to the Pacific Gas & Electric Company?

A. Yes. It is my recollection Mr. Hockenbeamer was very insistent that the North American Company in no way attempt to interfere with, or supervise, the management of Pacific Gas & Electric Company if negotiations were to be concluded, and that Mr. Dame and Mr. Gruhl had such an understanding with him as a part of the concluding negotiations.

Q. What term would you use to describe the position of North American Company with respect to Pacific Gas & Electric Company?

A. Merely a stockholder.

Q. Would it be fair to say that it looks upon its [1443] stock holdings as an investment?

A. It does.

Q. Was the question of a change from the owner of control of operating companies in California to that of an investor in a much larger company the subject matter of discussions at the time this transaction was being negotiated?

(Testimony of James Fogarty.)

A. Yes. We carefully considered that matter ourselves.

Q. And a decision was reached by North American with respect to this, was it?

A. Yes, it was. It was our conclusion that it would be in the interest of the entire situation in California if the territory served by Pacific Gas & Electric Company and Great Western Power, Great Western Power being a competitor of Pacific Gas & Electric, that all of the property be under one management and operation from the point of effecting operating economies, maintaining a stronger financial position, and generally in the public's interest as well as strengthening the operating situation. It was our feeling that in view of that we were willing to give up a controlling position or position of stockholders, minority stockholders, for the holders of an investment in the Pacific Gas & Electric Company.

Q. The considerations which you have just mentioned, [1444] are those principally, are they not, which led to the conclusion by North American Company that it was willing to go forward with this deal? A. They are.

Q. Who is Mr. Guy C. Earl?

A. Mr. Earl was President of Great Western Power Corporation at the time the North American Company acquired Western Power Corporation, which was its parent company.

(Testimony of James Fogarty.)

Q. Do you know what arrangement, if anything, or understanding, was had between Mr. Black and Mr. Hockenbeamer with respect to representation of North American on the Board of Executive Committee of Pacific Gas & Electric Company?

A. I believe an understanding was had that two, or perhaps three, members of North American organization were to be Directors of Pacific Gas & Electric Company upon completion of the transaction.

Q. Do you know whether there was any understanding with respect to representation on the Executive Committee?

A. I believe Mr. Earl, who was one of those named to go on the Board of Pacific Gas & Electric Company, was also to become a member of the Executive Committee.

Q. Did Mr. Earl send forward any information or reports respecting the action of the Board of Directors and of the Executive Committee of Pacific Gas & Electric [1445] Company? A. Yes.

Q. Did you see those?

A. On occasions. Mr. Black received those and followed them through.

Q. Will you describe generally their nature?

A. He sent on the financial and operating statements that were presented at the meetings, with comments upon the discussions which took place at the meetings when there was any matter of importance discussed.

(Testimony of James Fogarty.)

Q. Do you know whether those reports were preserved, his comments?

A. I could not say exactly as to that because they were more informal than reports—more informal communications than reports.

Q. Did Mr. Earl receive compensation from the North American Company during the time he served as a Director and member of the Executive Committee of the applicant? A. He did.

Q. Do you know what that amount was?

A. I am not sure. Of course, our records would show, but it may have been ten or twelve thousand dollars a year.

Q. Do you know whether or not that compensation was paid to him principally in consideration of past services, or was it for future services?

[1446]

A. Well, Mr. Earl had been President of Great Western Power Company, and as such he had been drawing a salary. We felt that with the acquisition of the subsidiaries of Western Power by Pacific Gas & Electric Company Mr. Earl would be the man to follow the reports of Pacific Gas & Electric Company and report to us. We did not feel that we could call upon him to render that service without compensation.

Q. Was the amount of it fixed in part in the light of the fact that he had been for many years an important and salaried official of these companies? A. Yes.

(Testimony of James Fogarty.)

Q. Sometimes the word such as "pension" is used in such relations. Might that be properly used here?

A. Well, I do not know whether it could be defined as a pension. It might be considered continuing compensation in a much lesser amount than he had been previously receiving.

Q. Do you recall the circumstances of a reduction in the amount of Pacific Gas & Electric dividend in September of 1933?

A. I could not say when it occurred, but I do remember that when it did occur we in the North American Company were very much surprised, because we did not know about it until the action had been taken, and Mr. Dame, who was then [1447] President of the North American Company, was not very happy about such an important action having been taken and the Directors of the company not having been consulted about it.

Q. Do you know what he did, if anything?

A. Well, I think both he and Mr. Black had some communication, perhaps by telephone—I believe it was by telephone—with Mr. Hockenbeamer about it.

Q. Did those communications have any result in changing the action? A. No, they did not.

Q. Do you recall the increase of current dividend of the Pacific Gas & Electric Company which took place sometime in 1936? A. Yes.

(Testimony of James Fogarty.)

Q. Were you consulted in advance in connection with that? A. No.

Q. Mr. Black was elected President of the Pacific Gas & Electric Company in November of 1935, succeeding Mr. Hockenbeamer. Will you state what you know about his selection?

A. The first time I knew he was being considered for the position was when Mr. C. O. G. Miller called me on the telephone and asked if we would not release Mr. Black. I told him at that time Mr. Black was one of our senior executives and Vice President of North American Company, and that [1448] we did not want to lose him. He was one of our important men. He said that he had discussed the matter with some of the members of the Executive Committee, and that he was calling me after that discussion. I believe it was on the following day that he called me on the telephone again, and said he had discussed the matter with the other members of the Executive Committee or Board, and that they concurred in the request made the day before that the North American Company release Mr. Black. Following Mr. Miller's first conversation with me, I told Mr. Black about it, and when Mr. Miller called me the second time I reported that to Mr. Black and told him that Mr. Miller would call him on the telephone and talk with him about it.

Q. When Mr. Miller called you on the telephone the first time, had Mr. Black's name occurred to

(Testimony of James Fogarty.)

you as a possibility for the presidency of the applicant? A. It had not.

Q. The suggestion came as a complete surprise, did it? A. It did.

Q. In that first conversation, did you tell Mr. Miller that you would release Mr. Black?

A. No, I do not recall that I did. I do recall my surprise and expressing to him that surprise, and also telling him that it would be a very important matter to the North American Company to lose Mr. Black. If that may be [1449] considered an expression of reluctance, then I would say that is so; but I do not recall the exact form.

Q. You did not tell Mr. Miller at that time it was all right, and you had no objection to it, did you? A. No.

Q. You took it under consideration, and it was not until the second conversation that you advised Mr. Miller that it had your approval if they wished to go forward with it?

A. Yes. I then explained to Mr. Miller that if the Board of the Pacific Gas & Electric Company wanted Mr. Black as President, and he wanted to accept it, that we in the North American Company did not feel we should stand in Mr. Black's way.

Q. What was the executive personnel situation in the North American Company at that time?

A. Within a short time before that, that is the year 1933, in one year we lost Mr. Gruhl by death. He was then President. In December of the same

(Testimony of James Fogarty.)

year we had lost Mr. Dame by death. He at that time being President, having resumed that office following Mr. Gruhl's death. Mr. Doolittle, who was a Vice President of the North American Company, was not in good health and retired the following year. Mr. Huff, who was a Vice President of North American Company, had wished to retire and did so at about the same [1450] time, or shortly after Mr. Black resigned, so that our executive staff having been depleted as it was, we would have suffered a very substantial loss, and did suffer a very substantial loss in the resignation of Mr. Black.

Q. Had Mr. Black, prior to your conversation with Mr. Miller, ever suggested the possibility of his being considered as President of the North American Company?

A. No, he had not. It is my recollection that the conversation with Mr. Miller was had very soon after the death of Mr. Hockenbeamer.

Q. When you spoke to Mr. Black after your first telephone conversation with Mr. Miller, did he evidence any surprise that he was being considered for that position?

A. Yes. He was greatly surprised.

Q. Will you state the substance of that conversation between yourself and Mr. Black?

A. I told him what Mr. Miller had said. I do not recall that he immediately expressed any opinion concerning it. We did discuss our own executive

(Testimony of James Fogarty.)

situation in the North American Company, and as nearly as I can recall, the matter was left for further discussion, which discussion took place after Mr. Miller's second telephone call.

Q. Did you advise Mr. Black at the time of our first conversation, you were willing to release him?

A. Well, in that first conversation we discussed the [1451] position of our executive staff as I have outlined, and I do not recall that I expressed to him any opinion at that time that the North American Company would object to it, but I, in going over the circumstances with which he was familiar, pointed out to him what it would mean to the North American Company.

Q. You did not express any enthusiasm at the prospect of his going, did you?

A. I did not.

Q. Upon Mr. Black's election as President of the Pacific Gas & Electric Company, did he sever all his relations with the North American Company and its associated companies?

A. He did. [1452]

Q. Since that time, has he occupied any position or had any business relationship with the North American Company or any of its associated companies? A. He has not.

Q. By the way, do you personally own any securities in the Pacific Gas and Electric Company?

A. I do not.

(Testimony of James Fogarty.)

Q. What communications have you had with the Pacific Gas and Electric Company or its officers or employees since 1930?

A. I do not recall that I had any prior to the time I became president of the North American Company. Since that time they have been very few.

Q. What has been the subject matter of those communications?

A. Principally such matters as any important rate reduction which the company was contemplating and which Mr. Black was proposing to recommend to the Board, proposals which he was contemplating presenting, perhaps, with respect to refunding outstanding securities, and any other matters of such importance. For instance, a matter like the Hetch-Hetchy situation.

Q. These communications have been by telephone, principally?

A. Yes, but my telephone conversations with Mr. Black [1453] have been very few. There may have been a letter or two concerning some of them, I do not recall at the moment.

Q. Could you approximate the number of communications you have had per annum?

A. I may have talked with Mr. Black over the telephone perhaps four or five times a year.

Q. And how many letters per year?

A. Oh, maybe two or three. When some litigation of importance such as the rate case, for instance, was up, Mr. Black may have sent on copies

(Testimony of James Fogarty.)

of briefs filed by counsel for the company, and they would be acknowledged. I should say that the communications by letter were probably not more numerous than the telephone calls.

Q. During the period that you have been a director of the Pacific Gas and Electric Company, have you received corporate reports from time to time from the Pacific Gas and Electric Company?

A. Yes.

Q. How were those reports sent?

A. They are sent either to Mr. Freeman or to me, addressed to us individually, and they are the regular monthly reports of the company.

Q. I show you Applicant's Exhibit No. 33. (Handing witness document) Are the reports which are shown in that exhibit typical of the sort of reports which are sent to you? [1454]

A. Yes.

Q. What is done with those reports?

Mr. Freeman looks them over more frequently than I do and then they are placed in our files.

Q. Have you ever, of your own initiative, in behalf of the North American Company, communicated to Pacific Gas and Electric Company or any of its officers, your views respecting a contemplated action by Pacific Gas and Electric Company before it has been taken?

A. I may have expressed to Mr. Black a view with respect to some matter such as a proposed

(Testimony of James Fogarty.)

rate settlement, at the time he told me he proposed to submit it to the Board.

Q. That is, the settlement of the gas rate litigation that you have in mind? A. Yes.

Q. That involved several million dollars?

A. That's right.

Q. And your view as a director was asked by Mr. Black?

A. He called me and told me it was proposed to settle that litigation, and it is my recollection that I felt that it would be a wise thing to do from the viewpoint of the company and the public generally.

Q. And you expressed your acquiescence in that suggestion? A. Yes. [1455]

Q. Do you recall of any other instances?

A. No, I do not. That is the one I had in mind, particularly.

Q. My question really was, have you ever, of your own initiative, made any suggestions with respect to Pacific Gas and Electric Company?

A. No, I have not.

Q. Prior to action?

A. I have not. I am sorry I overlooked your expression of "my own initiative."

Q. Your answer is no? A. No.

Q. And your answer with respect to consultation or discussion generally prior to action is confined to your answer to the former question?

A. That is correct.

(Testimony of James Fogarty.)

Q. Has Mr. Black asked the benefit of your information in connection with market conditions in connection with the sale of securities by P. G. & E.?

A. Yes, Mr. Black has, on occasion, called me to get some information as to the state of the bond market and the general position of securities, whether issues which had previously been gotten out and distributed, and what effect that had on the market.

Q. Has the North American Company ever attempted to [1456] influence or control the management, policies or acts of the applicant?

A. It has not.

Q. Are the management or policies of the applicant subject to a controlling interest either directly or indirectly by the North American Company?

A. They are not.

Q. Has the North American Company ever attempted to influence or control the payment of dividends by the applicant?

A. Yes, in 1933, when the dividend was reduced, Mr. Dame made an effort to have it restored, but without success.

Q. With that exception, do you know of any?

A. No, I do not.

Q. Have you or anybody else in the North American Company ever attempted to, ever suggested the election or selection of any official or employee of the Pacific Gas and Electric Company?

A. No.

(Testimony of James Fogarty.)

Q. That question a moment ago, I think I used the wrong word in that, and I will therefore repeat the question: Are the management or the policies of the Pacific Gas and Electric Company subject to a controlling influence, either directly or indirectly, by the North American Company?

A. No. [1457]

Q. Are any contracts, oral or written, in existence between the North American Company and the P. G. & E.? A. No.

Q. Does the P. G. & E. owe any money to the North American? A. It does not.

Q. Does the North American owe any money to the Pacific Gas and Electric Company?

A. It does not.

Q. Since 1930, has the North American Company ever had any business or other transactions with the Pacific Gas & Electric Company except with relation to the issuance of the stock and stock rights relative thereto? A. No.

Q. Are drafts of the proposed annual reports of the Pacific Gas and Electric Company sent to you as a director?

A. Yes, I think a printed proof is sent to me.

Q. Is there enough time left after you receive it to communicate any suggestions you might have prior to its being printed?

A. There has not been.

Q. In fact, you usually get the draft after the report has been printed in San Francisco?

(Testimony of James Fogarty.)

A. Well, it is my recollection that I receive the proof at about the time it is to go out to the stockholders.

Q. Has any representative of the North American Company [1458] ever been present in person at a stockholders' meeting of the Pacific Gas and Electric Company? A. No.

Q. Has it been the practice of the North American Company to execute and forward the usual form of company proxies sent out by the Pacific Gas and Electric Company? A. It has.

Q. Mr. Earle died in 1935. Do you know whether or not any discussions were had as to the selection of a successor to him to serve on the Executive Committee of the applicant as a representative of North American Company?

A. Well, I have the recollection that Mr. Black and I talked about the matter and he may have discussed it with Mr. Hockenbeamer, but I have no recollection of any specific discussion.

Q. Did you have any views at that time with respect to whether or not some successor should be appointed?

A. I do not recall now that I did.

Q. The matter was simply permitted to lapse, was it? A. Yes.

Q. In your opinion, Mr. Fogarty, would it be possible for the North American Company, either directly or pursuant to some arrangement or understanding with others, to gain control, directly or

(Testimony of James Fogarty.)

indirectly, of the Pacific Gas and Electric Company? [1459]

A. Whom do you mean by "others"?

Q. Well, any one.

A. Only if the Board of Directors of Pacific Gas and Electric Company were to join in such a movement.

Q. Do you think it would be possible for the North American Company to acquire stock control of the Pacific Gas and Electric Company?

A. As a practical matter, no.

Q. Why?

A. Well, the number of shares outstanding is so large that before even a small fraction of the additional amount that we would have to have to have control could be acquired, the price would reach prohibitive levels, if for no other reason.

Q. You could not even start to buy stock, could you, without getting the approval of the S. E. C.?

A. No.

Q. So you would have to have the cooperation of the S. E. C. if you were to increase your stock holdings in this company, would you not?

A. We would.

Q. What chance, do you think, the North American Company would have to acquire control of the applicant as against the management and Board of Directors in San Francisco?

A. None. [1460]

Q. Why?

(Testimony of James Fogarty.)

A. Well, the Pacific Gas and Electric Company is an old established California company. Its management has always been local. Its directors apparently are men of considerable standing, and undoubtedly would be able to obtain enough proxies from the stockholders to prevent the acquisition of control by any other interests that sought it.

Q. If the North American attempted to solicit proxies, it would have to do so under the rules and regulations of the S. E. C., would it not?

A. It would.

Q. In your opinion, would it be possible for the North American Company, either alone or in cooperation with others, to obtain a controlling influence over the management and policies of the Pacific Gas and Electric Company?

A. No, excepting in conjunction with the Board of Directors.

Q. Do you think there would be any chance of obtaining such an influence against the opposition of the directors and management of the company?

A. I do not.

Q. Do you control or have a controlling influence over any director or officer of the Pacific Gas and Electric Company, with the exception of Mr. Freeman? A. No. [1461]

Q. Is Mr. Black a representative of the North American Company? A. He is not.

Q. Is any one holding an official position with the Pacific Gas and Electric Company or serving

(Testimony of James Fogarty.)

as a director, a representative or subject to the control of the North American, with the exception of Mr. Freeman? A. No, and myself.

Q. And yourself, yes. In your opinion, would it be desirable or in the interests of the North American Company to attempt to gain either control or exercise the controlling influence over the management or policies of the Pacific Gas and Electric Company?

A. Would you mind repeating the question?

(Question read.)

A. I can think of no reason why it would.

Q. What effect would any such attempt have on the values of the securities of P. G. & E., in your opinion? A. I don't know.

Q. Do you think that such an attempt would be resented by the local directors and by the public generally in the territory served by the company?

A. Well, I am sure it would be resented by the local directors, and with such a large amount of Pacific Gas and Electric stock held locally as it is, I imagine the preference [1462] of those stockholders would be for the ownership to remain as it is.

Q. Yes. Now, referring to the attitude of the public generally and public officials, what do you think to reaction would be?

A. The local regulatory authorities and the local public officials would probably prefer to have the

(Testimony of James Fogarty.)

company remain in control of the local board and local stockholders.

Mr. Phleger: I think that is all.

The Examiner: I think we will take a few minutes' recess.

(Thereupon, a short recess was taken.) [1463]

The Examiner: Resume the hearing.

Cross Examination

By Miss Calkin:

Q. Mr. Fogarty, what interests controlled the Western Power Corporation at the time it became a sub-holding company in the North American System?

A. There were several large stockholders, I believe.

Q. Do you remember a man by the name of Wilson? A. I do.

Q. Was he one of the large stockholders in Western Power Corporation? A. He was.

Q. Do you know whether or not he was the person with whom the representative of the North American Company carried on their negotiations in respect to the acquisition of the control of that company? A. He was.

Q. Would you say the interests which controlled Western Power Corporation in 1925 were Eastern or Western interests?

(Testimony of James Fogarty.)

A. I do not recall. Mr. Wilson was a Californian. That is, he had a home in the East, but he had spent a good deal of time in California and had been responsible for developing Great Western Power Corporation.

Q. I believe on direct examination you testified the [1464] acquisition of the control of that company was accomplished by an exchange of common stock of the North American Company for common stock of the Western Power Corporation. Wasn't there also—I mean, didn't the North American Company acquire a substantial block of the preferred stock of the Western Power Corporation?

A. Yes, but I think that was by purchase and not in exchange.

Q. Not in exchange?

A. I am not entirely clear about that. It was not ordinary common stock, at any rate.

Q. Were you a member of the Board of Directors of Western Power Corporation from 1925 to 1930?

A. I may have become a director as soon as the North American Company acquired control, but I am not sure.

Q. Who would you say was in active charge of the affairs of Western Power during that period?

A. Mr. Black, who was then a vice-president of the North American Company, followed the operation of the Western Power subsidiaries more particularly.

(Testimony of James Fogarty.)

Q. What were the activities of that corporation from 1930 until the time of its dissolution which, I believe, occurred in 1936?

A. Nothing except an investment company, its assets consisting of Pacific Gas and Electric Company common stock [1465] and some cash.

Q. At all times, Western Power Corporation's portfolio consisted of its investment in subsidiaries of Pacific Gas and Electric common, is that true?

A. I believe that is correct.

Q. You know little about the negotiations which preceded the acquisition of the controlling stock of the subsidiaries of Western Power Corporation by the applicant other than what Mr. Dame and Mr. Gruhl and Mr. Black and others told you, is that correct?

A. That is true. I did not participate in the negotiation.

Q. You had no conversations at all with Mr. Hockenbeamer prior to the acquisition of the control by the applicant of those subsidiaries?

A. Well, during that period Mr. Hockenbeamer may have been in New York and had luncheon with Mr. Dame, Mr. Gruhl, and Mr. Black, and I may have met him. I know that I did have luncheon with him and he came down to the office, but I am not clear as to when that was.

Q. But you had no specific duties to perform with respect to that acquisition?

A. I did not.

(Testimony of James Fogarty.)

Q. Who proposed the acquisition of the subsidiaries of Western Power Corporation? [1466]

A. I believe Mr. Hockenbeamer did.

Q. In your opinion, was one of the parties to the transaction more anxious to have it consummated than the others, and if so, which one?

A. Well, the idea originating with Mr. Hockenbeamer, I would say that he was more interested to make the acquisition than the North American Company was to dispose of its holdings.

Q. Do you know when the idea that such an acquisition might take place first originated?

A. No. I could not fix the time.

Q. Did you ever know that as early as 1922 the applicant carried on negotiations with the people that were then in control of Western Power Corporation for the acquisition of the securities of the then subsidiaries of Western Power Corporation?

A. No, I did not know.

Q. Was control of Western Power Corporation acquired by North American with the idea in mind that there would be a subsequent disposition of those properties? A. No.

Q. To the applicant? A. It was not.

Q. Why did North American Company acquire control of the Western Power Corporation? [1467]

A. North American Company's policy might be said to be based on two important factors: One, an acquisition of property that, through the effecting of operating economies or some physical advantage

(Testimony of James Fogarty.)

in the way of providing power supply, would be helpful to already existing subsidiaries or, two, a situation, which afforded promise of opportunity for profitable development of funds with prospective growth of Western Power Corporation in that category.

Q. You mean to say it has not been the policy of the North American Company to acquire operating companies for the purpose of trading in them or selling them at a later date?

A. It has not. Quite to the contrary in 1923 we acquired a holding company for the purpose of acquiring properties that fitted into the territory of some of our operating subsidiaries; and when we acquired that holding company we disposed of all the outlying properties and retained only those that were located in the territory of our own subsidiaries.

Q. If you know the reasons which motivated the North American in consummating exchange of the securities of Western Power Corporation subsidiaries for the common stock of the applicant, I wish you would relate all the reasons why the deal was considered desirable from the standpoint of North American Company.

A. The Great Western Power Corporation which was one [1468] of the two principal subsidiaries of Western Power was a competitor of Pacific Gas and Electric Company? Pacific Gas and Electric Company was a very much stronger com-

(Testimony of James Fogarty.)

pany. Its credit position was very much better. It seemed to us that the acquisition by Pacific Gas and Electric Company of the properties of Western Power would provide the advantages which would result in elimination of competition and would enhance the possibilities of developing that part of what would be the Pacific Gas and Electric Company's system; and for that reason would be generally in the interest of the public and the companies themselves.

Q. Did North American ever consider the sale of those securities for cash to the applicant?

A. I do not recall that the Pacific Gas & Electric Company proposed to purchase them for cash. We would not have looked upon a cash sale with favor.

Q. Why not?

A. First, there was a very substantial amount involved and it would have been difficult for us to re-invest the money on a satisfactory income basis, and I believe that under the new organization provisions of the Revenue Law at that time the acquisition of control in exchange for stock of the Pacific Gas and Electric Company obviated taxable profit.

Q. In determining to make the deal on the basis on which it was made, was one of the primary considerations the [1469] fact that the dividends expected from the common stock of the applicant

(Testimony of James Fogarty.)

would be a substitute for or approximately equal to the expected earnings of those subsidiaries?

A. It was.

Q. Had they been retained by Western Power?

A. It was.

Q. Did Mr. Williams take an active part in the negotiations preceding the 1930 deal? A. No.

Q. Do you recall why that was?

A. There was no reason why he did not any more than any other officer. I am not sure, but it is my recollection—I am not sure in the first place, but it is my recollection that he was not then an officer of the North American Company; and if he were, it would have been necessary that every officer participate in the negotiations.

Q. Do you know whether or not Mr. Williams approved the transaction before it was consummated?

A. I believe we, as the negotiations were proceeding, kept our Board of Directors advised; and when they were concluded the Board approved it.

Q. Was Mr. Williams Chairman of the Board at that time of North American?

A. I do not believe he was.

Q. What was your position with the company in 1930? [1470] A. Vice-president.

Q. What disposition was made of the assets of Western Power upon its dissolution?

A. They were distributed to the stockholders.

Q. It was as a result of that dissolution that

(Testimony of James Fogarty.)

the North American now owns its holdings in the applicant.

A. That's right, except that before Western Power Corporation was dissolved, it offered to its stockholders the right to purchase part of its holdings of Pacific Gas and Electric Company and the North American Company exercised that right of purchase applicable to its holdings and thereby came in direct possession of a large amount of the Pacific Gas and Electric Company's stock. The balance of it, I believe, was given to the North American Company in proportion to its holdings at the time of dissolution.

Q. I believe you testified it was your understanding that North American, upon the consummation of the 1930 transaction, would be entitled to two or three members on applicant's Board of Directors and one member on its Executive Committee. Do you know how and by whom this determination was made?

A. I believe that was the result of an understanding with Mr. Hockenbeamer. That is my recollection.

Q. Do you know whether or not North American requested a larger representation than it was agreed it would receive? [1471] A. I do not recall.

Q. To what extent was it then anticipated, that is at the time of the 1930 deal was completed, that North American Company would participate in the affairs of the applicant?

(Testimony of James Fogarty.)

A. It was not contemplated that it would participate in its affairs at all. In fact, Mr. Hockenbeamer felt very strongly that if the transaction was consummated, the North American Company should occupy the position only of stockholders.

Q. Do you know why he took that position? Did he ever indicate to you?

A. No, he did not, but I assumed it was because he and the directors wanted to continue their policy of local management.

Q. Mr. Fogarty, up to that time, had North American ever acquired such a substantial interest in the common stock of a utility company without taking an active part in the determination of the operating and financial policies of the company whose securities would have acquired?

A. Expressed in dollars, I do not believe that that is true, but the North American Company had at that time a large investment in the Detroit Edison who was not one of its subsidiaries and whose management and policies and operations it did not control.

Q. Would you say that that was the only company in [1472] which the North American owned directly or indirectly as much as 30 percent of the common stock in which it did not participate in its operations and financial policy?

A. No, the North American Company, in 1926, acquired a large interest in the common stock of

(Testimony of James Fogarty.)

North American Light & Power Company, and it did not undertake the control of that company until 1932, the end of 1932, or early in 1933, following the receivership of the Middle West Company, which with its affiliated companies, had an interest about the same as the North American Company's.

Q. Would you say, then, that the Detroit Edison and the North American Light & Power Company were the only situations where the North American owned as much as 30 percent of the common stock, where it did not control?

A. Yes, they are the only two instances which I recall.

Mr. Phleger: May I interrupt?

(Discussion off the record.)

By Miss Calkin:

Q. Would your answer be the same, then, with respect to companies in which North American Company owned as much as 17 percent of the voting securities, Mr. Fogarty?

A. Yes, as far as I can recall.

Q. What did you consider North American's sphere of influence as regards the applicant would be when the 1930 [1473] transaction was completed and North American became the owner of approximately 17 percent of the voting securities of the applicant?

A. Merely to the extent that the number of North American officers on the Board were to have votes individually as directors.

(Testimony of James Fogarty.)

Q. Why has North American had only two representatives on applicant's Board since 1926, when it is entitled, under the oral agreement had with Mr. Hockenbeamer in 1930, to three such representatives?

A. I don't know that there was any particular reason for that. When a vacancy arose, the local directors preferred to fill it by electing a Californian, the North American Company would not have expressed objection to it.

Q. Well, North American has had only two representatives on applicant's Board, I believe, since Mr. Earle's death, at which time Mr. Black and Mr. Doolittle were its representatives. Following Mr. Earle's death, and then following Mr. Black's election to the presidency of the applicant, what discussions, if any, did you have with either Mr. Hockenbeamer or Mr. Black or other representatives of the North American Company with respect to electing a director, which would give North American three members on applicant's Board?

A. I had no discussions with Mr Hockenbeamer. I [1474] believe Mr. Black and I talked about it after Mr. Earle's death, but nothing registers very clearly in my mind, and I would say that the matter just dropped.

Q. Well, you don't recall, then, instructing Mr. Black, or telling Mr. Black, to inform Mr. Hockenbeamer that North American did not desire that

(Testimony of James Fogarty.)

the vacancy created by Mr. Earle's death be filled by its representative?

A. I do not recall that.

Q. Now, shortly following Mr. Black's election as president of the applicant, I believe you became a member of the applicant's Board. Now, at that time was there any discussion as to future representation by North American Company with three directors? A. No.

Q. So you now recall no discussions had between yourself and Mr. Black as to North American's future representation being reduced to two members? A. No.

Q. Do you now feel, or have you ever felt, that because Mr. Black, who was formerly associated with the North American Company is now president of the applicant, that North American's full representation on applicant's Board is not necessary as it was prior to Mr. Black's presidency?

A. No, there was no connection between the two [1475] things.

Q. You would say there was no co-relation between the determination of North American Company to have only two representatives and Mr. Black's election to the presidency of the applicant?

A. Yes.

(Testimony of James Fogarty.)

Q. Have you ever heard any one connected with the North American Company state, in substance, that as president, Mr. Black would protect North American's interests in such a manner that the full representation on the Board would be unnecessary?

A. No, I have not.

Q. Have you ever discussed the matter with Mr. Williams? A. No.

Q. With Mr. Shea? A. No.

Q. Have you never considered Mr. Black a North American representative on applicant's Board since he assumed the presidency of the applicant? A. I have not.

Q. Have you testified as to oral discussions which you now can recall concerning North American's decision to reduce its representation on applicant's Board to two members? [1476]

A. Yes.

Q. Why did Mr. Doolittle resign as member of the applicant's Board?

A. He resigned at the time that he retired from the North American Company.

Q. Do you know how the Proxy Committee or persons to whom proxies of the applicant are addressed are selected?

A. I assume they are selected by the Board of Directors of the Pacific Gas and Electric Company.

Q. But you have no personal knowledge?

A. No, I read that in the minutes, perhaps, that

(Testimony of James Fogarty.)

is the usual procedure, and I assume it was followed in the case of Pacific Gas and Electric Company.

Q. Have you, as director of the applicant, ever suggested the name of any member of the Proxy Committee? A. No.

Q. Has Mr. Black or Mr. Hockenbeamer ever conferred with you as to who should constitute the members of the Proxy Committee? A. No.

Q. Prior to mailing out proxy statements, which, under the present rules of the S. E. C., must state the names of the directors, the Proxy Committee proposes to vote for, what conversations, if any, have you had with Mr. Black concerning the persons whose names should be inserted in [1477] the proxy statement as the proposed directors?

A. None.

Q. Did you ever discuss with Mr. Hockenbeamer the membership of applicant's Board of Directors?

A. I did not.

Q. Have you ever suggested the election of any one to that Board other than those individuals who are recognized as North American's representatives on that Board? A. I have not.

Q. Have you ever suggested the non-election of any individual other than the so-called North American representatives? A. I have not.

Q. What discussions, if any, have you had with Mr. Black concerning the personnel of applicant's Board? A. None.

(Testimony of James Fogarty.)

Q. By what means——

A. That is, none that I recall.

Q. By what means does the North American advise Mr. Black whom it desires elected as its representatives on applicant's Board at the annual meeting of stockholders?

A. We do not advise him. We assume that we are advised to the contrary, that the officers of the North American Company who are directors of Pacific Gas & Electric Company will be renominated for election. [1478]

Q. Mr. Fogarty, have you seen copies or the original of documents which I took from the files of the North American Company when I made an investigation preliminary to this proceeding, in the Fall of 1939?

A. Well, I have seen the file, copies of which we have, but I have not examined them.

Q. Do you recall several letters from Mr. Dame and Mr. Gruhl and Mr. Black, advising Mr. Hockenbeamer as to whom North American would like to have elected as its representatives on applicant's Board?

A. I do not recall having seen those letters.

Q. Have you ever written any such letters to Mr. Black since you have been a director of the company? A. I have not.

Q. And you say you have not advised Mr. Black, prior to each annual stockholders' meeting, that

(Testimony of James Fogarty.)

North American desires the re-election of yourself and Mr. Freeman? A. That is correct.

Q. But you——

A. I have not advised him.

Q. But you have merely assumed you would be re-elected in absence of advice to the contrary?

A. That is correct.

Q. Since you have been a director of the applicant, Mr. Henry D. Nichols has become a member of applicant's [1479] Board. Did Mr. Black confer with you regarding Mr. Nichols' election?

A. He did not.

Q. As director of the applicant?

A. He did not.

Q. Mr. Crocker, the evidence previously introduced in this case shows, was elected to the applicant's Board in October of 1937. Did Mr. Black confer with you regarding the selection of Mr. Crocker, the proposed selection of Mr. Crocker?

A. No.

Q. Mr. Palmer was elected to applicant's Board in October, 1936. Did you have any conversations with Mr. Black concerning Mr. Palmer's selection as a director? A. I did not.

Q. Mr. Wishon was elected at the same time as Mr. Palmer. Were there any discussions with Mr. Black concerning Mr. Wishon's election?

A. No.

Q. Mr. McIntosh became a member of the Board at the same time that you did, Mr. Fogarty. Were

(Testimony of James Fogarty.)

there any discussions with Mr. Black concerning Mr. McIntosh's selection? A. No. [1480]

Q. Has there ever been a time when a North American representative was in fairly regular attendance at applicant's directors' meetings?

A. No.

Q. Did you consider Mr. Guy C. Earle a representative of North American Company or applicant's Board? A. Yes.

Q. Do you know with what degree of regularity Mr. Earle attended Board meetings?

A. I think he attended quite regularly.

Q. Then it is true that during his lifetime North American did have a representative in regular attendance at applicant's Board meetings?

A. Yes. I had not thought of Mr. Earle when I answered your previous question.

Q. Did Mr. Earle advise North American Company rather fully concerning discussions by Board members and the action taken at Board meetings during the time he was on applicant's Board?

A. Yes. He reported on action taken at the Board meetings or Executive Committee meetings and made some notes concerning discussions that were had.

Q. To what extent did you or other representatives of the North American Company communicate your viewpoint to Mr. Earle with request he present them on behalf of North American [1481] Company to Board meetings?

(Testimony of James Fogarty.)

A. The only case which I can recall in which a North American viewpoint was requested to be presented to the Board was at the time of the reduction of the dividend.

Q. Was that request made to Mr. Earle?

A. I could not say whether—well, undoubtedly the matter was discussed with Mr. Earle, but I believe Mr. Dame and Mr. Black also discussed it directly with Mr. Hockenbeamer.

Q. What action did you or any representative of the North American Company take on the information which Mr. Earle supplied you during his directorship?

A. I do not recall at any time—I don't recall any time at which any action was required.

Q. Wasn't Mr. Earle's function as a director during his lifetime to convey to the Board the views of the North American Company on various matters which were under consideration by the Board or the Executive Committee?

A. No. I suppose if the North American Company had any view on any matter which was proposed, it would have been communicated to the Board through Mr. Earle. But, as I say, the only instance in which a North American viewpoint was presented on which I have recollection was that of the reduction of the dividend. Mr. Earle's function and the service he performed was to attend the meetings and send to us the reports which were given to

TRANSCRIPT OF RECORD
IN FIVE VOLUMES

APR 10 1944
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1943

No. 873

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent,

VOLUME IV

Pages 1473 to 1670

UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 590 Folsom St., San Francisco

No. 9918

United States

Circuit Court of Appeals

For the Ninth Circuit.

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

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Transcript of Record

In Four Volumes

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Pages 1473 to 1670

Upon Petition to Review an Order of the Securities and Exchange Commission.

PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

(Testimony of James Fogarty.)

him, as a director, the [1482] comments from time to time upon discussions which had taken place at Board meetings.

Q. During that period he was paid a salary of ten or twelve thousand dollars a year by the North American Company? A. That is correct.

Q. Would you say Mr. Earle would never have received any salary had he not been a representative of North American Company on the applicant's Board and on its Executive Committee?

A. No, I would not say that he would not have received any salary. I believe he would have received some compensation because of his——

Q. Simply by reason of the fact he had been formerly associated with the Great Western Power Company of California? A. Yes.

Q. But he was during that period expected by the North American Company to attend Board meetings and keep it advised as to the action of the applicant at those Board meetings? A. Yes.

Q. Who is now performing the same function Mr. Earle performed during his lifetime?

A. Nobody.

Q. Does Mr. Black furnish North American with substantially the same information which was furnished it by Mr. [1483] Earle during his lifetime?

A. Well, Mr. Black has sent on to Mr. Freeman and me the reports that are presented to the Board, which were the reports given to Mr. Earle. But Mr. Black does not accompany those with notes con-

(Testimony of James Fogarty.)

cerning discussion had at the Board meetings, as Mr. Earle frequently did.

Q. In your opinion, is North American Company better informed of the affairs and business of the applicant now than it was during Mr. Earle's lifetime? A. No.

Q. Would you say there was no difference in information received by the North American Company prior to and subsequent to Mr. Earle's death?

A. I would say if there is any difference, that it would be in the absence of the comments formerly made by Mr. Earle with respect to matters discussed at the Board meetings.

Q. I believe you have testified Mr. Black's primary duties during the time he was Vice-president of the North American Company were to look after the North American Company's investment in the Western Power. Is there any other person—is there any one in the North American organization at the present time who is performing the functions which Mr. Black performed during the period 1930 until the time he became president of the applicant?

A. No, there is not. [1484]

Q. Would you say the North American was not keeping in as close touch with the applicant's affairs as it did during Mr. Black's vice-presidency?

A. Mr. Black made a trip every year to California—I believe he did in every year—and discussed matters with the officers of the Pacific Gas and Electric Company probably at greater length than

(Testimony of James Fogarty.)

the few discussions I had with them when I have been out there. And that naturally follows from two causes: One, Mr. Black was an operating man and was familiar with a large part of the territory served by the Pacific Gas & Electric Company through its former Western Power Company's subsidiaries; and, secondly, Mr. Black, as a technically trained man, quite naturally discussed matters which I, a nontechnical man, would not have discussed.

Q. On the occasions of Mr. Black's trips to California during the time he was Vice-president of the North American Company, did he go to California for the purpose of transmitting to Mr. Hockenbeamer or Mr. Downing the views of the North American Company with respect to the applicant's operations and general policies?

A. No, he did not.

Q. What would you say the purpose of his visit there was?

A. Well, as sort of a periodic visit to a property [1485] in which the North American Company had a large interest for the purpose of discussing the affairs of the company generally, as any director might do on the job.

Q. If Mr. Black were not president of the applicant, in your opinion would North American have only two directors on applicant's Board, or would North American be represented thereon by some

(Testimony of James Fogarty.)

person in more or less regular attendance who would report to it as Mr. Earle did?

A. I do not think Mr. Black's presidency has any influence on that situation.

Q. Does Mr. Black advise you of important problems he has to submit to the directors' meetings before the same are submitted?

A. The only one I can recall is the one to which I referred before, and that was the settlement of the Gas Rate litigation.

Q. Do you go over the material which is submitted to you by the applicant?

A. Sometimes, but Mr. Freeman follows those reports more closely than I.

Q. If, in reviewing the same you were apprised of some action by the Board with which you did not agree, what action would you take, Mr. Fogarty?

A. I would express my viewpoint to Mr. Black.

Q. Have you ever done so? [1486]

A. No. There has not been any occasion.

Q. There has never——

A. Except that Gas Rate litigation I referred to before that I can recall.

Q. You never thought it advisable or necessary to object to any action taken by applicant's Board since you were a director?

A. I have not.

Q. Who now performs the function of keeping North American Company advised as to the action of the Executive Committee?

(Testimony of James Fogarty.)

A. We receive minutes of the Executive Committee in New York.

Q. Although you have no representation on that committee? A. No.

Q. And how did it happen you were furnished that information when Mr. Earle ceased to be a member of the Executive Committee?

A. Well, I suppose that the same information that had been furnished to Mr. Earle being sent directly to New York included the minutes of the Executive Committee on which he was a member.

Q. Do you recall whether or not the North American Company made a specific request that it be furnished such [1487] information as it had been receiving during Mr. Earle's lifetime?

A. No, I do not recall any such specific request.

Q. Do you feel, as long as Mr. Black is president of the applicant, North American's representation on the applicant's committee is not necessary?

A. That has no connection with it. My feeling about representation on the applicant's committee is that it would not be helpful to the Pacific Gas and Electric Company to have a member of a small body such as the Executive Committee, which meets as frequently as it does, living at such a distance because he would not be able to attend the meetings and might, on occasion, for that reason interfere with their obtaining a quorum.

Q. Would you assign those as reasons why North

(Testimony of James Fogarty.)

American has not filled the vacancy on the Executive Committee created by Mr. Earle's death?

A. No, I do not believe there were any reasons. I think that that matter just—well, I think the best way to describe it would be to say it just lapsed.

Q. In other words, Mr. Earle's death—the vacancy on that committee resulting by reason of Mr. Earle's death never became a matter of particular concern to the North American Company?

A. No. [1488]

Q. Why was Mr. Black transferred from California to New York City in 1927?

A. It was Mr. Dame's thought that with the operating experience Mr. Black had had, that with the growth of the responsibilities of our organization in New York, he would be a valuable addition to our executive organization.

Q. Do you recall when it was in reference to Mr. Hockenbeamer's death that Mr. Miller first called you?

A. No, except to say that it was quite soon after.

Q. How did you first learn of Mr. Hockenbeamer's death?

A. It is my recollection I read it in the newspapers.

Q. Do you recall any conversation you had over the telephone with Mr. Downing in which he advised you of Mr. Hockenbeamer's death?

A. No, I do not. It is my recollection that I read it in the paper in the morning and that I

(Testimony of James Fogarty.)

waited until some time after twelve o'clock because of the three hours' difference in time, and having discussed the matter with my associates I called Mr. Downing to express to him our sympathy because of Mr. Hockenbeamer's death; but I do not recall Mr. Downing apprised me of it.

Q. Do you recall having discussed with Mr. Downing on the occasion of the telephone call which you did have with him the successor to Mr. Hockenbeamer's position? [1489]

A. Yes. I said to him in substance that he being the No. 2 man, I assumed he would be Mr. Hockenbeamer's successor.

Q. You mean by that, he being the general manager and vice-president?

A. The senior vice-president, that I assumed he would be Mr. Hockenbeamer's successor and if that were so, the North American as a stockholder of the company would feel quite satisfied.

Q. Did you have any subsequent conversations with Mr. Downing regarding his possible selection as Mr. Hockenbeamer's successor? A. No.

Q. Did you have any discussion with your associates prior to the time Mr. Miller called you regarding Mr. Hockenbeamer's successor? A. No.

Q. Would you say——

A. Except that in the discussion which was not a very formal one during the forenoon of the day on which I learned of Mr. Hockenbeamer's death, it is my recollection that I mentioned to Mr. Free-

(Testimony of James Fogarty.)

man, I think—I am not sure about that—to Mr. Black that I assumed they had gone into the assumption Mr. Downing would be Mr. Hockenbeamer's successor.

Q. And neither yourself nor any one associated with [1490] you objected to Mr. Downing's acceptance of Mr. Hockenbeamer's position——

A. No.

Q. —in the event that should be the selection of the Board? A. No.

Q. You had only two telephone conversations with Mr. Miller? A. That is all.

Q. Regarding Mr. Hockenbeamer's successor?

A. Yes, that is right.

Q. Do you know whether or not Mr. Miller talked to Mr. Black on the telephone between those two conversations that you had with him?

A. No. I do not believe he talked to Mr. Black between those conversations because I think the second one was held on the day following that which I had the first one.

Q. At the time of the second conversation, did you in effect tell Mr. Miller he was free to carry on any negotiations with Mr. Black regarding this matter?

A. Yes. In substance I did, because I do recall having told him if the directors of the Pacific Gas and Electric Company wanted Mr. Black as president and Mr. Black wanted to accept the office, that

(Testimony of James Fogarty.)

the North American Company did not feel it should stand in his way. [1491]

Q. After having conveyed that information to Mr. Black, I assume Mr. Black indicated, either then or later, he would accept the position if it were offered.

A. Yes. I believe Mr. Black indicated to me, along about the time of my second conversation with Mr. Miller, that he would like to accept the position.

Q. Did you discuss this matter with Mr. Williams? A. No, I did not.

Q. You had no conversations with Mr. Williams regarding Mr. Hockenbeamer's successor prior to the election of Mr. Black? A. I did not.

Q. How did you first learn of Mr. Black's election to the presidency of the applicant?

A. Before Mr. Black left New York I knew he was going to be President, but the first information I had that he was desired by the Directors for that position was Mr. Miller—was the first of Mr. Miller's two telephone calls.

Q. Did you discuss with Mr. Miller the possibility of Mr. Downing's selection? A. No.

Q. Did any other directors of the applicant talk with you concerning the selection of Mr. Black?

A. No.

Q. Other than Mr. Freeman? [1492]

A. No.

(Testimony of James Fogarty.)

Q. Were there any written communications between you, or any representative of the North American Company, and any representative of the applicant, concerning Mr. Black's election as President?

A. No.

Q. Did you have any conversations with Mr. Black prior to his leaving New York City to accept the presidency of the applicant, regarding his future attitude toward the applicant's largest stockholder? A. No, I did not.

Q. Was there anything said about whether or not he would endeavor to keep North American advised as to the applicant's position and action to be taken in connection therewith?

A. Not that I recall.

Q. Did Mr. Black ever tell you that Mr. Miller had called him and asked him whether or not he would sever all connection with the North American Company and its subsidiaries if he accepted the presidency which was being offered to him?

A. No, I do not recall Mr. Black ever told me that.

Q. Were there any conversations at this time which in any manner dealt with Mr. Black's future attitude toward, or contacts with, North American representatives?

A. Not so far as I can recall. [1493]

Q. Did you feel at that time that Mr. Black, as President of the applicant, would not take any

(Testimony of James Fogarty.)

action on major problems of the applicant without the advice of the North American Company?

A. No, I did not feel that he would seek the advice of North American Company. I assumed that on important matters, Mr. Black would consult with the Board and the officers of the North American Company who were on the Board would consequently know of such matters.

Q. Well, did you expect Mr. Black to seek the advice of the North American directors to a greater extent than Mr. Hockenbeamer had done during Mr. Hockenbeamer's presidency? A. No.

Q. Has he done so?

A. Not that I know of. I do not know the extent to which Mr. Hockenbeamer discussed the matters with Mr. Black or Mr. Dame during his lifetime, so that I would not be able to say that he has advised us of proposed action to a greater or lesser extent.

Q. Did Mr. Black ever lead you to believe that he would seek your advice on matters of major importance before taking the same up with applicant's Board?

A. No, I never discussed that matter with Mr. Black.

Q. Didn't you expect that he would do so in view of [1494] his past association with the North American Company?

A. Well, I did not expect that Mr. Black's attitude would be affected by his past association with

(Testimony of James Fogarty.)

the North American Company. I did assume that Mr. Black would consult with the Board of Directors of the company, and as North American had officers on the Pacific Gas & Electric Company Board, that they would not be excluded.

Q. Was there any understanding between you and Mr. Black as to his future conduct in reference to applicant affairs on matters which North American, the largest stockholder, might be interested in during his presidency of the applicant?

A. No.

Q. Was there any understanding that during Mr. Black's presidency, he would also act as North American's representative in applicant's Board?

A. No.

Q. How frequently have you seen Mr. Black since he became president of the applicant?

A. Perhaps five or six times.

Q. How frequently have you been in California since 1935? A. Four times.

Q. And how frequently has Mr. Black, how often has Mr. Black been in New York since he has been president of [1495] applicant?

A. Well, I can recall only twice.

Q. When did you last see Mr. Black?

A. This past Summer.

Q. When did you last talk with him on the telephone? A. I don't recall.

Q. To what extent have you discussed the present proceeding with Mr. Black?

(Testimony of James Fogarty.)

A. Not at all.

Q. Do you mean that you have never discussed the filing of the application in 1935 and the pendency of the application, at any time since then?

A. No, I do not mean that. I was thinking more in terms of this present hearing, and I have not discussed the present hearing with Mr. Black. Undoubtedly, although I do not recall specific instances, or the subject of the conversation, undoubtedly, since the time the Pacific Gas & Electric Company filed its application, I have talked about the matter with Mr. Black, because I have seen him.

Q. Did you have a telephone conversation with Mr. Black along in the Summer of this year regarding the Hetch-Hetchy situation?

A. Yes, I do not recall just when it took place, but I did.

Q. What was the substance of the conversation, [1496] that occurred at that time?

A. When the matter or the question of the difficulty that Pacific Gas & Electric Company was likely to encounter as a result of Secretary Ickes' decision, I called Mr. Black and asked him the status of the matter, and there were a number of newspaper articles about it, and at that time he said that they were studying the matter, and were hoping to develop some kind of a plan that would be acceptable to Secretary Ickes.

Q. Have you talked with him since regarding that subject?

(Testimony of James Fogarty.)

A. I believe I have talked with him since the plan for the lease of the Pacific Gas & Electric Company properties has been developed.

Q. Do any other members of the North American organization talk to any representatives of the applicant over the 'phone?

A. I cannot think of any occasion.

Q. Have you ever talked over the telephone to any one in the applicant's organization other than Mr. Black?

A. Yes, I believe I called Mr. Black in connection with the Hetch-Hetchy matter, and it is my recollection that he was not there and I talked to Mr. Coghlan about it, asked him what the status of it was. [1497]

Q. What other members of North American's organization visit applicant's properties?

A. None that I know of.

Q. Do you know of no occasion on which your engineers or other experts viewed North American's properties in the last five years?

Mr. Phleger: You mean Pacific Gas & Electric?

Miss Calkin: Yes, applicant's properties.

A. No, I don't know of any such occasion.

By Miss Calkin:

Q. How frequently have representatives of the applicant been in New York to confer with North American people?

(Testimony of James Fogarty.)

A. Oh, I do not recall any time that they have been here for the purpose of conferring with North American people. In the course of the last couple of years, Mr. Black has been in New York twice, so far as I can recall, and Mr. Downing, I believe, has been in New York once, and I believe Mr. Coghlan has been in New York once.

Q. Did you ever discuss applicant's affairs with Mr. Wishon in New York?

A. No, I don't recall that Mr. Wishon has been in New York since the Western Power properties were turned over to the Pacific Gas & Electric Company.

Q. Are there any post contacts between North American Company and any other substantial stockholder of the [1498] applicant? Are you acquainted with the twenty largest stockholders of the applicant? Do you know who they are?

A. No, I know the name of some of the larger stockholders, but I am not familiar with the names of the twenty largest.

Q. Does the North American Company have any investment in the Sun Life Assurance Company of Canada? A. No, it has not.

Q. Do you know whether or not Sun Life Assurance Company holds any substantial amount of securities of the North American Company?

A. I think Sun Life owns North American common stock, but without referring to our stock lists,

(Testimony of James Fogarty.)

I couldn't say how much, and I believe it also owns bonds of our operating subsidiary companies.

Q. Do you know whether that company is one of the twenty largest stockholders of the North American Company?

A. The North American Company?

Q. Yes, whether or not the Sun Life Assurance Company——

A. No, I could not say without referring to our records.

Q. Mr. Fogarty, I hand you applicant's exhibit No. 20, which is a list of the largest stockholders of three classes of applicant's stock, and I will ask you to examine those and point out any companies which you know of as either [1499] having large holdings of the North American Company securities, or in which the North American Company has substantial interest (handing witness the exhibit)?

A. I believe the Sun Life Assurance Company of Canada has some North American common stock, but as I stated before, I do not know how much.

I believe Wonham, Albert & Company were North American stockholders for some considerable time, but I cannot say whether they are now or not.

Mr. Phleger: What are they, a brokerage house?

The Witness: No, I believe they are nominee for some foreign holdings.

The Examiner: Do they hold a substantial amount of North American securities?

(Testimony of James Fogarty.)

The Witness: Well, it may have been five or ten thousand shares of North American common stock, but whether they are stockholders now or not, or what their holdings were at that time, I could not say accurately.

A. (continuing) Noxid is nominee for North American stock.

I believe American Cities Power & Light Corporation is a large stockholder of the North American Company.

I am not sure whether Electrical Securities Corporation is a stockholder of the North American Company [1500] or not, but I believe the General Electric Employees Securities Corporation is a North American stockholder.

By Miss Calkin:

Q. To your knowledge, does the North American Company hold any interest in any of the companies that you have just mentioned as being stockholders of the North American Company?

A. No, the North American Company is not a stockholder of, and does not hold any interest in, the companies to which I have referred.

Q. Is there any understanding that you know of between the North American Company and any of the stockholders which you have just pointed out, as to the voting of their holdings, respective holdings, in the applicant? A. No.

Q. Have you, or to your knowledge has any representative of the North American Company had

(Testimony of James Fogarty.)

any discussions with reference to the management and policy of the applicant with any representatives of those stockholders that you have referred to in your previous answer? A. No.

Mr. Phleger: May I just ask, in response to that question, do you know if they had any conversations, you say no. You would know had they had any such conversations; wouldn't you?

The Witness: Yes, if the North American Company [1501] had any conversations with anybody else concerning voting of their holdings of Pacific Gas & Electric Company, I think I would know about it.

Mr. Phleger: Yes, so that your answer is that there have been no such conversations.

The Witness: That's right.

The Examiner: We will recess until 2:15.

(Whereupon, at 1:15 o'clock p. m., recess was taken until 2:15 o'clock, p. m.) [1502]

Afternoon Session

(The hearing was resumed pursuant to recess.)

2:30 P. M.

The Examiner: The hearing will resume.

Whereupon

JAMES F. FOGARTY

resumed the witness stand and testified further as follows:

(Testimony of James Fogarty.)

Cross Examination

(continued)

By Miss Calkin:

Q. Mr. Fogarty, does any one in the North American organization other than yourself and Mr. Freeman examine or review the material sent by the applicant to the North American Company?

A. Yes. I believe that those reports are looked over from time to time by some of the people in our Statistical Department.

Q. What action, if any, has been taken upon the information that you have received from those reports since 1930—I mean, what is the customary procedure in reference to the action of those reports after they are received?

A. They are put in our files. No action is taken. On occasion the question has been asked if the reports indicate a shortage of water or, I believe, on one occasion, Mr. Freeman, who looks over the reports, asked about the cash position of the company.

[1503]

Q. Have you ever requested the applicant to furnish any information which has been refused?

A. No. I do not recall any instance of asking for such information.

Q. Would you describe the difference, if there is any, in the reports now received by North American and those received during the time Mr. Hockenbeamer was president other than the comments of the minutes which Mr. Earle sent?

(Testimony of James Fogarty.)

A. I could not say whether there is any difference in the form of those reports. At that time I did not file them.

Q. Have you ever written any letters to Mr. Black or Mr. Hockenbeamer regarding information which you received upon an examination of the reports?

A. Not I, that I recall, but, as I said before, I think Mr. Freeman has made inquiry from time to time.

Q. How frequently have you or any representatives of the North American Company made recommendations to the applicant concerning its affairs, based upon information contained in these reports? A. None that I recall.

Q. Then, it is not customary for you to make recommendations to the applicant regarding its business? A. No, it is not.

Q. Have you ever criticised Mr. Black or Mr. Hockenbeamer for refusing to follow any suggestions of any nature [1504] made by yourself or other members of the North American organization?

A. The only instance of which I can think was the one to which I referred earlier when the dividend was reduced.

Q. And that was not handled personally by you?

A. No.

(Testimony of James Fogarty.)

Q. Has there ever been any major difference of opinion between the North American Company and the applicant as to matters pertaining to the applicant's business other than the dividend question?

A. None that I recall.

Q. Do you expect any recommendations or suggestions which you might make to Mr. Black in regard to applicant's affairs to be followed?

A. Well, if we felt there was any occasion to make any recommendations, we would feel they should be considered. Whether or not they would be followed is a matter to be decided by the directors.

Q. What action would you take if you knew Mr. Black was about to recommend to the Board action on the part of the applicant which, in your opinion, would be extremely detrimental to the interests of the North American Company?

A. I think we would inquire into the reasons for it first, and if we felt that it was not in the interests of the company, we might raise the question and have it brought [1505] before the Board or the Executive Committee.

Mr. Phleger: By "Company", you mean Pacific Gas and Electric Company?

The Witness: Pacific Gas and Electric Company.

The Examiner: Would you read that answer? I don't think I got it quite clearly.

(Answer read.)

(Testimony of James Fogarty.)

By Miss Calkin:

Q. What would you do to raise the question?

A. It is a little difficult to answer a hypothetical question. I think it would depend upon the particular circumstance.

Q. Would it be probable that you would communicate your views to Mr. Black or that you would attend a Board meeting and take the matter up in a Board meeting?

A. Well, if such an occasion as you describe were to arise, we would present our views to Mr. Black. Whether or not we would attend a Board meeting would depend on the particular circumstance or the possibility of Mr. Freeman or I going to California to attend a meeting.

Q. Mr. Fogarty, I hand you what has been marked for purposes of identification Commission's Exhibits Nos. 138 to 140, inclusive, and will ask you if you can identify those documents. (Counsel hands documents to witness for examination.)

[1506]

A. (Witness examines documents.) Yes, this is my signature. I do not at the moment recall the circumstances of this correspondence.

Q. In your opinion, are those documents true and correct copies of telegrams which were exchanged between yourself and Mr. Hockenbeamer?

A. I have no reason for believing they are not. I would say that is a photostatic copy of a letter and these are typewritten copies of telegrams.

Q. If they were copies of documents which I

(Testimony of James Fogarty.)

took from the files of the North American Company, it would be your best judgment that they would be true and correct copies of documents which they purport to represent and were exchanged between yourself and Mr. Hockenbeamer?

A. Yes.

Miss Calkin: We offer in evidence Commission's Exhibits 138 to 140, inclusive.

The Examiner: They will be received in evidence and marked as Commission's Exhibit 138, without objection, which is a photostat of a telegram dated November 19, 1934, J. F. Fogarty to A. F. Hockenbeamer.

(The document referred to was received in evidence and marked Commission's Exhibit No. 138.)

The Examiner: As Exhibit No. 139, copy of telegram of November 19, 1934, from A. F. Hockenbeamer to J. F. Fogarty. [1507]

(The document referred to was received in evidence and marked Commission's Exhibit 139.)

The Examiner: And as Exhibit No. 140, a photostat of letter on the letterhead of North American Company to A. F. Hockenbeamer, President of Pacific Gas and Electric Company signed J. F. Fogarty, President.

(The document referred to was received in evidence and marked Commission's Exhibit No. 140.)

(Testimony of James Fogarty.)

By Miss Calkin:

Q. As President of the North American Company, would you have insisted that the service mentioned in your telegram be arranged for if Mr. Hockenbeamer had been of the opinion such service had not been advisable?

A. I have no recollection of the information contained in the telegram, but if there were something Mr. Hockenbeamer had deemed inadvisable, we would not have insisted upon it.

Q. Do you feel that in view of the fact that North American is applicant's largest stockholder, that any recommendation or suggestion made by you should be given greater consideration than that made by any other stockholder?

A. No, not on the basis of size of our stockholdings.

Q. Do you feel it should be given any greater consideration on any other basis? [1508]

A. No. But I do feel that any suggestion that we would make Pacific Gas and Electric Company, if any, would be based on what we regarded sound reasons and should have the consideration of the Company.

Q. Has applicant ever submitted a draft of its budget to the North American Company before the same was submitted and approved by its Board?

A. No, not as far as I know.

(Testimony of James Fogarty.)

Q. Does North American have no knowledge as to applicant's contemplated expenditures which would be set forth in its annual budget?

A. Well, when the construction program for—when future construction programs have been decided upon by the Board and they are covered by the reports, they are sent to New York as indicated in the schedule which you showed me this morning, we would have that kind of advance information because the construction budgets cover the period of time ahead of the time they are adopted.

Q. But other than the information contained in the reports, typical copies of which are included in applicant's Exhibit 33, you have no knowledge of the budget? A. No.

Q. Do the subsidiaries of North American submit to it their proposed budget? A. They do.

[1509]

Q. Does Mr. Black consult you or any other North American representative before making any substantial expenditures not included in applicant's budget? A. No.

Q. Does North American approve or in any manner act upon requisitions for expenditures of the applicant? A. No.

Q. Does it do so with respect to its subsidiaries?

A. After the budgets are approved—after the budgets of our subsidiary companies are approved, the expenditures from time to time are followed by members of the North American organization

(Testimony of James Fogarty.)

which is not the case of the Pacific Gas and Electric Company.

Q. Have there been occasions on which Mr. Hockenbeamer or Mr. Black have consulted with representatives of North American with reference to the advisability of applicant making a major improvement in its property? A. No.

Q. Is North American advised as to all large construction jobs before the same are commenced by the applicant?

A. Only to the extent that we have knowledge of it in the reports that are made and adopted by the Board of Directors, which naturally contemplate extensions to be made thereafter.

Q. Have you ever told Mr. Black that North American [1510] should be advised of any improvement which involved a large expenditure of money before the same was finally determined upon?

A. I have not.

Q. On the occasions when you see Mr. Black, do you go over generally with him contemplated large expenditures? A. No.

Q. Have you ever made any recommendations or suggestions regarding such matters?

A. No, I have not.

Q. Has there ever been a difference of opinion between you and Mr. Black regarding the advisability of applicant expending a large amount of money for a major improvement? A. No.

(Testimony of James Fogarty.)

Q. The construction work which required refinancing or raising of additional money, on that you would expect to be advised, would you?

A. When the matter would be in such shape as to be presented to the Board of Directors, Mr. Black might inform either Mr. Freeman or me of such action, although there have been a number of instances of refunding concerning which we have not been advised in advance.

Q. Have you or any representative of the North American Company ever initiated the idea of a major construction project for the applicant?

[1511]

A. No.

Q. Do you know of any instances in which you or any representative of the North American Company has voiced his disapproval of a contemplated piece of work after which Mr. Black has submitted the same to applicant's Board for favorable action thereon? A. No.

Q. Has the North American Company been advised as to contemplated major acquisition by the applicant, if any have been made, since 1930?

A. I cannot think of any major acquisitions that have been made by P. G. & E. in recent years.

Q. Have there ever been such acquisitions proposed which have been not recommended by you?

A. We have never made any recommendation as to acquisitions.

(Testimony of James Fogarty.)

Q. Could you generally describe the extent to which you and Mr. Black have conferred on matters of a general nature pertaining to the applicant's business?

A. Not in any detail. I would say that the discussions had to do with the condition of the company's business, that is, possible increase in electric and gas output, the prospect of earnings, of growth, perhaps the possibility of refunding to effect savings, or the condition of the bond market which would have some effect on finances. [1512]

Q. Have you and Mr. Black ever agreed upon a general policy to be followed by the applicant in regard to its financial and operating matters?

A. No.

Q. Have there been occasions on which Mr. Black has asked your opinion regarding such policies of the applicant?

A. No, he has not asked my opinion about policies, but, on occasion, has inquired as to the state of the bond market and financial conditions in general, if there was a thought that the company might do some financing.

Q. You do feel free to make any suggestions that might come to your mind to Mr. Black concerning the applicant's affairs, do you, Mr. Fogarty?

A. Yes.

Q. To what extent have you made such suggestions? A. None that I can recall.

(Testimony of James Fogarty.)

Q. Have you given Mr. Black any advice on the Hetch-Hetchy situation? A. No.

Q. Has the North American Company or its representatives ever participated in applicant's activities in connection with municipal elections on bond issues to raise money to build a municipal distribution plant for the City of San Francisco?

A. No. [1513]

Q. Could you state what type of problem you, as a representative of the North American Company, believe Mr. Black should submit to the North American Company before final action is taken thereon by the applicant?

A. Only such matters as would customarily be brought before the stockholders. So far as Mr. Freeman and I as directors of the Pacific Gas and Electric Company are concerned, important matters which would require the judgment and the action of the Board would be those which Mr. Black might bring to our attention in advance and perhaps ascertain our thought as directors of the company concerning them.

Q. Well, how many instances can you now recall where Mr. Black has conferred with you regarding a particular policy prior to the time the matter was submitted to the applicant's Board for action by the Board?

A. The only case that occurs to me is the settlement of the gas rates that I referred to before.

(Testimony of James Fogarty.)

Q. Other than that, you have not been advised of any particular matters of major importance which were to be determined by applicant's Board prior to the time you received the minutes of the meeting at which the action relating to that particular matter was taken?

(Question read.)

A. That is correct, so far as I can recall. [1514]

Q. Did you ever discuss the dividend policy of the applicant with Mr. Hockenbeamer?

A. No, I did not.

Q. On your direct testimony, did you state everything you know of the action which was taken by the North American Company after the dividends were reduced on the common stock of the applicant in 1933? A. Yes. [1515]

Q. And North American Company was not apprised that such deduction in dividend was contemplated before the Board decided to reduce the dividend? A. That is correct.

Q. Did you feel that North American should have been advised by Mr. Hockenbeamer of this reduction before the action was taken by the Board?

A. Yes. Our feeling was that it was such an important matter that the Directors of the company should have been advised that it was contemplated.

Q. Were you apprised of the increase in dividend before the same occurred in 1936? A. No.

Q. Did you not consider the increase of dividends

(Testimony of James Fogarty.)

a matter of importance equal to the reduction of dividends in 1933?

A. Yes. Yes, it was of equal importance, but the effect of it would be an entirely different matter. There could not be—the same questions would not arise in that case as would have arisen in the case of a reduction of the dividend. By that I mean that company's earnings and its surplus and its cash position were such that during what might have been regarded as a temporary condition, or temporary situation, the company could have continued dividends at its regular rate. It might have had some influence on [1516] the company's credit to have reduced them at that time. Adverse influence, I mean.

Q. Did Mr. Black seek your advice, or your opinion, or your comments on the question of increasing dividends before he submitted the matter to the Board? A. No.

Q. And when did you first learn that the Board had taken such action?

A. Well, I couldn't say just how soon after the Board's action that we were advised.

Q. Do you know from whom you received such advice or information?

A. No, I don't recall the circumstances.

Q. Have you ever discussed applicant's dividend policy with Mr. Black? A. Not that I recall.

By the Examiner: Did you ever make any request of the Company for the Board of Directors

(Testimony of James Fogarty.)

of the Pacific Gas & Electric Company after the dividend reduction in 1933, that you members of the Board in New York be notified before any other change, or similar action was undertaken by the Board in California?

The Witness: I couldn't say whether such report was then made by Mr. Dame or Mr. Gruhl or Mr. Black.

The Examiner: But you personally know of none? [1517]

A. I personally know of none.

By Miss Calkin:

Q. If Mr. Black contemplated recommending a decrease in the dividends on applicant's common stock, do you feel that he should advise North American of such contemplated recommendation before he submitted the matter to the Board?

A. I think that he should advise the Directors of the company that such a matter was contemplated to be recommended by the officers so that the directors might give the matter some thought.

Q. Is there any understanding between you and Mr. Black that he will advise you of any contemplated change in applicant's dividend policy?

A. No, there is no such understanding.

Q. Has the subject of dividends ever been discussed over long-distance telephone between you and Mr. Black? A. Not that I recall.

Q. Has there been any correspondence between you on this subject? A. Not that I recall.

(Testimony of James Fogarty.)

Q. Have you ever communicated with Mr. Black and asked what dividends he contemplated recommending at a particular Board meeting?

A. No.

Q. To what extent have you discussed applicant's [1518] personnel organization with Mr. Black?

A. I do not recall that I ever discussed it with him.

Q. Have any employees been transferred from North American subsidiaries other than Western Power Corporation to the applicant? A. No.

Q. Has Mr. Black discussed with you the advisability of making changes in the occupancy of any of applicant's key positions? A. No.

Q. To what extent are you familiar, and are you acquainted, with the individuals holding key positions with the applicant other than the officers of the company?

A. I do not recall anyone who is not an officer or counsel of Pacific Gas & Electric Company whom I know.

Q. Have you ever made any recommendations or suggestions to persons occupying the position of department heads with the applicant? A. No.

Q. Your discussions concerning applicant's business have been almost exclusively with Mr. Black or Mr. Hockenbeamer.

A. Not with Mr. Hockenbeamer, as I recall, but on the few occasions to which I referred earlier on which I have been in San Francisco, I talked with

(Testimony of James Fogarty.)

Mr. Black, or [1519] I have been to see Mr. Downing, Mr. Coghlan, and Mr. Wishon, but such discussions as I had with them are of a general nature.

Q. Doesn't North American Company have a rate expert in its employ? A. Yes.

Q. Who is that? A. Mr. Neil.

Q. Has Mr. Neil ever performed any work for the applicant? A. No.

Q. Are applicant's taxation problems submitted to North American tax experts for advice?

A. No.

Q. Has North American ever advised the applicant on any tax problems.

A. Not to my knowledge.

Q. Would such advice be given if it were requested?

A. I believe that any information that we have that would be useful to a company in which we had as large an interest as we have in the Pacific Gas & Electric Company would be gladly furnished.

Q. The North American Company maintains a rather substantial accounting department, does it not? A. It does. [1520]

Q. Does the accounting department perform services for North American subsidiaries and advise them on matters?

A. It meets with officers of subsidiaries from time to time and members of our accounting staff discuss accounting problems with them.

(Testimony of James Fogarty.)

Q. Those services are rendered free of charge?

A. Yes.

Q. Free advisory arrangement, is it not?

A. Yes.

Q. Are the services of this department available to the applicant?

A. I think the answer to that question would be covered by my earlier answer, that any information or assistance we could—the P. G. & E. might call on us for, we would gladly give.

Mr. Phleger: I would like to interrupt. When you use the word "available" you have a different connotation other than if request was made. It is not available, is it?

The Witness: No, it is not available as such.

By Miss Calkin:

Q. Have representatives of that accounting department ever consulted with a representative of the applicant on accounting matters?

A. Not to my knowledge.

Q. Does the North American Company have an insurance [1521] expert in its employ?

A. No.

Q. Mr. Fogarty, can you describe the nature of the services performed under fiscal service contracts which were in force in the North American Company and its subsidiaries prior to 1935?

A. Yes. The coupons of bonds and indentures, interest bearing securities of our subsidiary com-

(Testimony of James Fogarty.)

panies, were paid. Dividends on stock of such companies as had stock outstanding in the hands of the public and largely held in the East or listed on the New York Stock Exchange were paid. Our Transfer Department handled the transfers of stock of the companies where transfers are required in New York because of listing on the Stock Exchange or the Curb.

Q. Did the Western Power Corporation and its subsidiaries have such a contract with the North American Company prior to 1930?

A. Such an arrangement was in effect but not by contract.

Q. Has there ever been in existence a fiscal service contract between the North American and the applicant? A. No.

Q. Did the North American Company cease to render such service for Western Power Corporation after June, 1930? A. It did. [1522]

Q. Why was such contract not entered into between the applicant and the North American Company after 1930?

A. There was no reason why it should be.

Q. Did the North American Company ever perform any of the services provided for in such contract for the applicant.

A. No. And those matters, as I said before, were arrangements rather than contracts. I mean, there were no written documents covering them.

(Testimony of James Fogarty.)

Q. But none of the services performed under those arrangements were performed for the applicant? A. That is correct.

Q. Can you describe the Station Advisory Committees, with particular reference to who composed such committees and what its functions are?

A. The Station Advisory Committee is composed of engineers of the various subsidiaries of the North American Company who meet at frequent intervals to discuss common problems with respect to power plant and station line operations, types of equipment to be installed in power plants, contemplated to be constructed, and matters having to do with technical features of the operation of the subsidiary companies.

Q. Has the applicant ever had any representative on this committee? [1523] A. No.

Q. Do you know whether or not any of applicant's engineers have ever attended meetings of the Station Advisory Committee?

A. I could not say, but I do not know of any instance in which they have.

Q. Do you know whether or not applicant's engineers have ever been invited to participate and have a membership on this committee?

A. I know of no such invitation.

Q. If applicant had requested representation on this committee, would such representation have been granted to him?

(Testimony of James Fogarty.)

A. Yes. I think the answer to that question is covered by my earlier answer. If the engineers of the North American subsidiaries had knowledge or experience which would be useful to the Pacific Gas & Electric Company, and it could be used beneficially by them, I am sure that organization would have been glad to provide it.

Q. Do you know of any such instance in which such information has been requested of the engineers of the subsidiaries of North American?

A. I do not recall any.

Q. You testified on direct examination, I believe, concerning group purchase contracts. Are all of the North American subsidiaries entitled to benefits provided in such [1524] contracts?

A. Not now. Those contracts are no longer in effect.

Q. You have no such contracts?

A. We have no such contracts now.

Q. That has been true since when?

A. I could not say when they were terminated but it was, I would say, several years ago.

Q. Were such contracts in existence subsequent to 1930? A. I believe they were.

Q. Has the applicant ever been one of the companies listed in such contracts as beneficiary entitled to discounts provided for therein? A. No.

Q. Did the North American Company ever offer the applicant the opportunity to participate in such contracts? A. Not that I recall.

(Testimony of James Fogarty.)

Q. Do you know whether or not the applicant ever requested the North American Company to include it as one of the beneficiaries in its group purchase contracts?

A. I know of no such request.

Q. Mr. Fogarty, can you describe generally the departments into which the personnel of the North American Company is divided and to the respective functions of each?

A. Yes. We have a Comptroller's Department which [1525] handles accounting matters of the North American Company and confers with the accounting officers and their assistants of the subsidiary companies. We have a Research Department which studies problems in connection with operations, integration; we have a Treasurer's Department which handles financial work of the payment of coupons, disbursements, cash disbursements in general, and we have the Secretarial Department which takes care of all corporate records. [1526]

Q. Do these departments perform services for the subsidiaries of the North American Company?

A. Yes, of the nature that I have described, in consultation with the respective officers and their assistants of the various subsidiary companies.

Q. In other words, they keep in close contact with the management and officers of the operating subsidiaries? A. That is correct.

Q. Do these departments perform any services for the applicant? A. No, they do not.

(Testimony of James Fogarty.)

Q. What is the extent of the contact between the applicant and those various department heads?

A. None.

Q. Can you describe the organization located on the 18th floor of the North American Building here in New York City, Mr. Fogarty?

A. That organization now has been changed so that the members of it who perform functions of the nature of those which would come under these various departments are now members of those various departments. That organization in its former form no longer exists.

Q. Well, the departments that you have just described as existing in the North American Company, that is, the secretarial, treasurer's, and comptroller's department, those [1527] still exist, do they not?

A. Oh, yes, yes, and it is into those departments that the members of the former 18th floor organization have been absorbed.

Q. You mean you now have no organization on the 18th floor such as you had in the Fall of '39?

A. That is correct.

The Examiner: Did that organization have any name?

The Witness: No, it was a group of employees who were paid by the subsidiary companies of the North American Company directly for rendering service, largely for them, and they are now members of the North American organization, and while

(Testimony of James Fogarty.)

they render the same service in the manner in which I have described, they are now employees of the North American.

By Miss Calkin:

Q. And are paid by the North American Company? A. Paid by the North American.

The Examiner: Prior to that, they were paid by the different subsidiaries collectively, or by different individual subsidiary companies?

The Witness: No, their salaries were paid by various companies. Each member of that organization received part of his salary from each of the subsidiary companies.

By Miss Calkin:

Q. Approximately how large was that organization on [1528] the 18th floor at the time it was operated as such?

A. Perhaps 12 or 14 people.

Q. And that organization existed subsequent to 1935 until the present arrangement, Mr. Fogarty?

A. That's right.

Q. During the period it was in existence, did the personnel of that organization perform any services for the applicant? A. It did not.

Q. Do you know whether or not that organization had any contracts with the applicant?

A. No, there were no contracts that I know of.

Q. And none of the employees of that organization were paid by the applicant?

(Testimony of James Fogarty.)

A. That is correct.

Q. Have you ever discussed with Mr. Black the advisability of the applicant having some New York employees in the North American office?

A. No.

Q. Did that group of persons ever assist the applicant in the preparation of its registration statements? A. No.

Q. Mr. Fogarty, I am informed that about the time of the effective date of the Public Utility Holding Act of 1935, that certain changes occurred in the relationships between [1529] the North American Company and certain utility companies, in which North American had a substantial investment. Will you describe all such changes which occurred at that time in the relationship between the North American Company and the applicant?

Mr. Phleger: Well, just a moment, that is a strange question.

By Miss Calkin:

Q. Well, all such changes, if any, which occurred at that time? A. There were no changes.

Q. Why was that true?

A. Because there were no arrangements in effect.

Q. Well, is it true, then, to say that the situation which had existed with reference to the North American Company and the Detroit Edison Company, for example, at the time of effective date of the

(Testimony of James Fogarty.)

Public Utility Holding Act, did not exist in reference to the applicant, certain arrangements which—

A. That is true. Such arrangements as existed with respect to the Detroit Edison Company did not exist with respect to the Pacific Gas and Electric Company.

Q. Would you say that in your opinion applicant's relationship to the North American Company is the same today as it was on the effective date of the Public Utility [1530] Holding Company Act of 1935? A. I would, yes.

Mr. Phleger: Might I just supplement that question?

And is the same as existed one month before the Public Utility Holding Company Act became effective? The Witness: Yes.

The Examiner: Was that the date of the contract?

The Witness: Effective date of the Public Utility Holding Company Act.

The Examiner: What was the date you are referring to?

Mr. Phleger: She very carefully asked whether the relationship was the same now as when the Act became effective, and it became effective some time after it was enacted, and I would think the more important question would be whether or not there was any change in the relationship while the Public Utility Holding Company Act was in process of being enacted, because I imagine these changes all

(Testimony of James Fogarty.)

took place, whatever they may have been, before the effective date.

The Examiner: Technically, after the approval of the President and before the effective date.

Mr. Phleger: Yes, that is the point of my question.

By Miss Calkin:

Q. Were there any changes that occurred during the period that at least could have been anticipated that there [1531] would be a Public Utility Holding Company Act of 1935?

A. No, the relationship of the North American Company to the Pacific Gas and Electric Company is the same as it was when the transaction of June, 1930, became effective, and has been so consistently since that time.

Q. Mr. Fogarty, during your long period of service with the North American Company, it is true, is it not, that most of your attention has been devoted to the financial problems of the North American Company and its subsidiaries, as distinguished from the operating problems?

A. Yes, that was true until I became president, and then my responsibilities became wider in scope, but never with respect to detailed operations of the subsidiary companies.

Q. Who in the North American Company offices supervises and acts in an advisory capacity on the financing of its various subsidiaries?

(Testimony of James Fogarty.)

A. I do.

Q. And who formulates the refinancing plans of the North American Company and its subsidiaries, and by that I mean, who determines whether or not certain issues will be refunded, whether new money shall be raised, and what type of securities shall be issued.

A. Those matters are passed upon by the Board of Directors. [1532]

Q. You mean of the respective companies?

A. Yes. I understood you to say the North American Company. That would be true with respect to each of the subsidiary companies.

Q. They are passed upon by those respective Boards after a definite plan has been formulated?

A. That is correct.

Q. And you act in an advisory capacity in connection with the formulation of those plans; do you not?

A. With respect to the North American Company we formulate the plans ourselves and present them to the North American Board. With respect to our subsidiary companies, we sometimes develop and recommend the plans to them, or, if the plans are developed and recommended by the officers of the operating company, we act in a consulting and advisory capacity with them.

Q. Is there any one in the North American Company's organization more active in this type of work than you are? A. No.

(Testimony of James Fogarty.)

Q. Who did the work of this nature during the years 1930 to '35?

A. Well, that work is not done by any one officer. The financial plans are considered by all of the executives before they are presented to the North American Board.

Q. During that five-year period, from 1930 to '35, [1533] you occupied much the same position as you now occupy with reference to the formulation of those matters? A. Yes.

Q. What discussions did you participate in or did you know about pertaining to the necessity for future financing by the applicant at the time the North American acquired the securities of the applicant?

A. I know of no discussion of that subject at that time.

Q. Did you, or to your knowledge did any one discuss with Mr. Hockenbeamer or any one in applicant's organization the financing which resulted in the sale of bonds by the applicant in 1930 and 1931? A. No.

Q. You were apprised of the fact that the National City Company had the leadership of applicant's financing for a number of years at the time the North American acquired its stock in the applicant, were you not?

A. Yes, I believe we were generally familiar with the investment banking firms that headed the

(Testimony of James Fogarty.)

business of principal operating companies throughout the country.

Q. Did you participate in, or do you know about, any discussions dealing with leadership of future financing by the applicant? A. No. [1534]

Q. Was it understood at that time, that is, in 1930, that the National City Company would continue to head any financing of the applicant?

A. Not so far as I know.

The Examiner: Do you mean understanding with the P. G. & E. and its officers, or just an assumption?

Miss Calkin: No, an understanding with the applicant.

A. I know of no understanding on the part of P. G. & E. with anybody.

By Miss Calkin:

Q. Do you recall what your first information that the applicant intended to sell $25,000,000. principal amount of bonds in July, 1930 was, and where you got that information?

A. No, I don't recall the circumstances.

Q. Was there any understanding at the time North American acquired the applicant's common stock between the North American Company and Mr. Hockenbeamer as to what rights the bankers of Western Power Corporation would have in the future financing of the applicant?

A. No, no understanding, so far as I know.

(Testimony of James Fogarty.)

Q. Who selected the National City Company to head the $25,000,000. issue of July, 1930, if you know?

A. I suppose the executives of the Pacific Gas and Electric Company. [1535]

Q. Did you or any representative of the North American Company have anything to do with the selection of the members of the underwriting syndicate which purchased that issue? A. No.

Q. Did you request Mr. Hockenbeamer to give consideration to any banking firm in connection with the 1930 issue? A. No.

Q. Did you have anything to do with the negotiations which resulted in the financing of the issue of $25,000,000. bonds of July, 1930?

A. My answers have been with respect to any issues of securities, so that my answer would be the same, whether it was 1930 or 1935, but I understood Miss Calkin to be talking about 1930.

Q. I am talking about the earliest financing after North American acquired its interests in the applicant.

A. My reply would apply to any financing, no.

Q. Now, applicant's next piece of financing was a $25,000,000. issue of bonds sold in January, 1931, to a syndicate headed by National City Company. Did Mr. Hockenbeamer consult you as to the advisability of this piece of financing, Mr. Fogarty?

A. No.

(Testimony of James Fogarty.)

Q. Were you apprised of the fact that these bonds would be sold prior to the date of their sale?

[1536]

A. Not that I recall.

Q. Did you have anything to do with the selection of the National City Company as syndicate manager of that issue? A. No.

Q. Did Mr. Hockenbeamer confer with you with regard to the price, spread, interest rates and similar matters, with respect to that issue?

A. No.

Q. Did you carry on or participate in any negotiations with the National City Company with respect to the 1931 issue? A. No.

Q. Do you know whether or not any banking house solicited your aid in getting a participation in that issue, that is, 1931?

A. I don't recall particularly, but if there was any banking firm that hoped to get a participation in any issue of the securities of the Pacific Gas and Electric Company in which North American had any interest, I am sure they would have asked our help, or the help of anybody else that they thought could help them get a participation, but I do not recall any.

Q. According to applicant's Exhibit No. 42, applicant's next piece of financing was a $45,000,000. issue headed by [1537] Lazard Freres & Company in March, 1935. Are you acquainted with Mr. Rus-

(Testimony of James Fogarty.)

sell connected with the firm of Lazard Freres & Company? A. I am.

Q. How well do you know Mr. Russell, Mr. Fogarty?

A. I have known Mr. Russell for a number of years, but not intimately.

Q. Prior to March, 1935, did you have any conversations with Mr. Russell regarding the future financing of the applicant? A. No. [1538]

Q. You were aware of the fact, were you not, that National City Company was out of the investment banking business at the time the applicant decided to do this piece of financing and therefore would not be able to head an underwriting syndicate for the purchase of its securities?

A. I do not identify with the time of issue of any securities the time when the various banks—investment banking affiliates—were required to dissolve the—get out of the investment banking business.

Q. Do you not recall that the Banking Act, I believe, was passed along in 1933, and at that time there was a general rearrangement of banking associations?

A. Yes, I recall that, but I did not recall the time when that took place. My point was I could not associate that with any particular security issue.

Q. Do you recall Mr. Hochenbeamer being in New York in September of 1934?

A. No, I do not, although he may have been.

Q. Do you recall having talked with Mr. Hoch-

(Testimony of James Fogarty.)

enbeamer at any time prior to the issuance of the March 1935 bonds? A. No, I do not.

Q. In reference to the contemplated financing?

A. No, I do not.

Q. Did you discuss with Mr. Hochenbeamer at any time prior to the sale of the bonds which were sold in March, [1539] 1935, the selection of a syndicate manager for this issue?

A. No, I do not recall having discussed the selection of a syndicate manager for any of the issues of the Pacific Gas & Electric Company.

Q. Did you ever at any time tell Mr. Hochenbeamer that you wanted Mr. Russell's firm to act as syndicate manager? A. No, I did not.

Q. Did you ever tell him or suggest to him that any other firm head that piece of business?

A. No, I did not.

Q. When did you first learn that Lazard Freres & Company would act as syndicate manager of that issue?

A. I cannot identify the date, but I do recall an issue of securities of the Pacific Gas and Electric Company which Lazard Freres & Company was selected manager for the first time. When I learned of it I could not say. I think that it was when there was public notice of the proposed issue of securities and announcement of the underwriters' names.

Q. As president of the North American Company which had very substantial investment in the

(Testimony of James Fogarty.)

applicant, you were naturally interested in seeing that a major piece of financing by the applicant was handled by a responsible syndicate, particularly in view of the fact it was one of the first [1540] large pieces of utility financing which had been attempted during that period of time, were you not, Mr. Fogarty? A. Yes.

Q. Did you not give Mr. Hochenbeamer the benefit of your views in connection with who should be syndicate manager and the membership of that syndicate and type of security to be sold?

A. No. Mr. Hochenbeamer was himself essentially a financing man and had a reputation of being one of the best.

Q. As soon as it became known on the Street applicant contemplated selling a bond issue, several banking houses considered getting the leadership or a membership in the syndicate, did they not?

A. I do not recall the circumstances, but I imagine that would be true in connection with the issuance of securities by any responsible company and with respect to any responsible bankers.

Q. Do you recall whether or not the representatives of any banking houses talked to you prior to the sale of the securities and formation of a syndicate in an effort to get you to use your influence to get them a participation in the syndicate?

A. No, I do not have a recollection of such a discussion with any investment banking firm.

Q. Do you know Mr. Loring Hoover? [1541]

(Testimony of James Fogarty.)

A. I do.

Q. He is associated with the First Boston Corporation, is he not?

A. No, he is not. He was for a while.

Q. With Blyth & Company?

A. A short time, I believe. He is associated with Blyth & Company.

Q. Do you recall, Mr. Fogarty, Mr. Hoover having been in Washington at the time you were down there watching the progress of the proposed Utility Holding Company legislation and seeing Mr. Hoover on that occasion? A. Yes.

Q. Did he talk to you at that time about the possibility of Blyth & Company getting the leadership of that syndicate which purchased the bond issue in March 1935, by the applicant?

A. He did not.

Q. Do you recall whether or not Mr. Hoover ever talked with you about the desire of Blyth & Company to head that syndicate?

A. No, I do not recall such discussion.

Q. Did you ever talk to Mr. Russell about heading this syndicate? A. No, I did not.

Q. Would you say the representatives of no banking [1542] firms solicited your aid in getting them the leadership or a participation in the March 1935 syndicate?

A. I am sure that so far as I can recall I should say no banking firm ever discussed with me the question of leadership in the syndicate, in any syn-

(Testimony of James Fogarty.)

dicate of the Pacific Gas & Electric Company. But banking firms may have raised the question from time to time with respect to other issues, as a possibility of their becoming participants in any underwriting syndicate.

Q. If they made such a request for your assistance then what did you tell these people?

A. My uniform policy was to tell them that Pacific Gas & Electric Company was independently managed and operated and the North American Company had no voice in such matters.

Q. Did you ever communicate any of the requests which were made of you to Mr. Hochenbeamer? A. No.

Q. Did you ever make any recommendations to Mr. Hochenbeamer concerning leadership of or membership in the March 1935 syndicate?

A. No, not that I recall. No.

Q. Did you suggest to Mr. Hochenbeamer at any time prior to March 1935 that Dillon, Read & Company be considered as syndicate managers of this issue? A. No. [1543]

Q. Is it a true statement that Dillon, Read & Company has acted as syndicate manager in practically all of the major financing which North American or its subsidiaries have had for a number of years? A. Yes, in most cases.

Q. Did Dillon, Read & Company ever request you, or to your knowledge, any other representative

(Testimony of James Fogarty.)

of the North American Company to do whatever you could to get them the leadership or a participation in the March 1935 issue of the applicant?

A. Dillon, Read & Company never asked me or any other representative of the North American Company so far as I know to get them the leadership, but it is possible that some member of Dillon, Read & Company may have spoken to me about the firm getting participation. But as to that I do not recall.

Q. If they did do so would you have given them the same answer you have already testified to as having been given to any other banking houses?

A. I would.

Q. Did you carry on any negotiations with Lazard Freres & Company relative to this piece of financing—that is, the 1935 issue—and if so, what negotiations did you carry on? A. None.

Q. Did Mr. Hochenbeamer consult with you regarding [1544] the price at which these bonds should be sold and the interest they should bear and similar matters in connection with such securities?

A. No.

Q. Did he ever confer with you regarding the condition of the markets prior to any financing that was done during the time of his presidency?

A. Not that I recall.

Q. Did you recommend to Mr. Hochenbeamer the selection of Lazard Freres & Company to head

(Testimony of James Fogarty.)

the syndicate which purchased the March 1935 issue? A. I did not.

Q. Did you ever express to Mr. Hochenbeamer any dissatisfaction over the selection of Lazard Freres & Company? A. I did not.

Q. Did Mr. Hochenbeamer ever tell you why he selected Lazard Freres & Company as the syndicate manager if the selection were made by him?

A. I did not.

Q. You and Mr. Black talked over this piece of financing, did you not, Mr. Fogarty?

A. Not that I recall.

Q. Did you ever give Mr. Black any instructions to communicate with Mr. Hochenbeamer on any matter pertaining to the financing of the applicant? [1545]

A. No.

Q. Are you a close friend of anyone in the Brown-Harriman organization—I think that name has been changed to——

A. Harriman, Ripley & Company.

Q. Harriman, Ripley & Company?

A. Yes, I know Mr. Ripley the president of Harriman, Ripley & Company very well.

Q. What contacts, if any, did you have with him in connection with the participation of his company or his banking firm in the applicant's financing?

A. None.

Q. Do you know how they got substantial participation in the March 1935 issue?

(Testimony of James Fogarty.)

A. No, I do not.

Q. Do you know whether or not any members of the Harriman-Ripley organization at any time were formerly associated with the National City Company?

A. Yes, I believe Mr. Ripley was a—had also been a vice-president of the National City. As was Mr. Russell.

Q. Do you know whether or not a substantial number of persons formerly connected with the investment banking business of National City Company became members of the banking firm of Harriman, Ripley & Company upon the secession of National City Company in the participation of investment [1546] banking business?

A. I believe a number of the officers of Harriman, Ripley & Company were formerly connected either as officers or in other capacities with the National City Company. But I could not say whether they became members of the Harriman, Ripley organization immediately upon the dissolution of National City Company.

Q. But you would say that Brown, Harriman's participation in the March 1935 issue was not due to any solicitation which they made of you?

A. Yes, I would say that.

Q. Did representatives of any of the following firms confer with you prior to March 28, 1935, in regard to participation in the syndicate being formed by the applicant: Blyth & Company?

(Testimony of James Fogarty.)

A. I am not clear as to whether Mr. Lieb of Blyth & Company spoke to me about the matter or not. He may have.

Q. What about E. B. Smith & Company? Are you acquainted with that banking firm?

A. Yes. I know two of the officers of E. B. Smith & Company—now Smith, Barney & Company. I do not recall a discussion with any of those officers.

Q. How about First Boston Corporation?

A. Yes.

Q. Are you acquainted with Mr. Addinsell?

[1547]

A. Yes, I am.

Q. Do you recall whether Mr. Addinsell or any of his associates requested you to assist him in getting participation in this business?

A. No, I don't.

Q. Bonbright & Company?

A. I am acquainted with the president of Bonbright & Company but I do not recall their having raised the question.

Q. Do you know anything about how Blyth & Company got second position on the West Coast in the March 1935 issue? A. No, I do not.

Q. Were you of the opinion in February 1935 that Blyth & Company should have had, or should have the leadership of this applicant's piece of financing?

A. I do not recall that I had any opinion in the matter.

Q. And you did not express any to Mr. Hochenbeamer? A. No.

Q. After the $45,000,000 issue was placed on the market, did you have any discussion with representatives of Blyth & Company prior to June 1935 when the applicant sold $30,000,000 of its bonds to a syndicate headed by Lazard Freres & Company that you recall now?

A. No, not that I recall. [1548]

Q. Mr. Fogarty, I hand you what purports to be a photostatic copy of a telegram dated February 15, 1935, from Mr. Lieb to Mr. Charles I. Blyth, and will ask you to read this instrument and see if it refreshes your recollection as to efforts made by Blyth & Company to get you to intervene on their behalf?

A. No, that does not recall to my mind anything that I have not stated.

Q. You do not now, then, recall specifically any activities on the part of Blyth & Company to get the leadership of applicant's financing?

A. No, I do not recall anything specifically. But as I indicated before I was not entirely clear about when a conversation might have taken place with Mr. Lieb. I have what you might call a hazy recollection that Mr. Lieb talked with me about the Pacific Gas & Electric financing, but I could not say when that was or whether it had to do with

(Testimony of James Fogarty.)

a participation or the leadership of the syndicate.

Y. You were apprised during that period, were you not, that Blyth & Company were most anxious and zealous in their efforts to get leadership of this business?

A. I do not recall that, but this telegram suggests to me somebody was trying to bring it to my attention. At that particular time, which was shortly after the Public Utility Holding Company bill was introduced in February, [1549] 1935, I was pretty fully occupied with that.

Q. The evidence already in this record I believe shows certain representatives of Blyth & Company had been in touch with Mr. Black and endeavored to get him to use whatever influence he might have on Mr. Hochenbeamer to get them the leadership of this business. Do you recall whether or not Mr. Black reported these conversations to you and what discussions, if any, you had with Mr. Black on the subject?

A. No, I do not recall them specifically, but undoubtedly if Mr. Black had any such discussions he mentioned them to me at the time.

Q. Do you recall whether or not you ever advised Mr. Black to get in touch with Mr. Hochenbeamer and suggest that Mr. Hochenbeamer take any particular action in reference to the membership of the syndicate? A. No.

Q. Did Mr. Hoover of Blyth & Company assist you and other utility executives to your knowledge

(Testimony of James Fogarty.)

in opposition to the Public Utility Holding Company Act of 1935?

A. Mr. Hoover did not assist any utility men as such, so far as I know. I believe he did speak to some members of Congress or perhaps some members of the United States Senate concerning legislation during the time he was in Washington.

Q. Do you know Mr. Ford or Mr. Woods of First Boston [1550] Corporation?

A. I know Mr. Woods.

Q. Do you know Mr. Ford?

A. Yes, I know Mr. Ford.

Q. Do you recall whether or not Mr. Ford ever talked to you regarding the desire of the First Boston Corporation to get a participation in applicant's financing? A. No.

Q. Did Mr. Hochenbeamer's first selection of Lazard Freres Corporation as syndicate manager of the 1935 issue weaken his position with the North American Company or the regard in which that corporation held him?

A. No, it did not have any effect on him.

Q. Did you ever tell anyone that it had that effect? A. No.

Q. Were you personally sympathetic with Blyth & Company's efforts to get the leadership of applicant's financing?

A. I don't recall very much about the efforts that they were making, but knowing of the standing of Blyth & Company, it would certainly have

(Testimony of James Fogarty.)

seemed to me that to have a firm of its financial responsibility and distributing ability to head the business, would be a good thing for the Pacific Gas & Electric Company.

Q. At that time would you have favored the selection [1551] of Blyth & Company over that of Lazard Freres & Company?

A. I don't know, that is, I cannot say what my feelings would have been, but I would say this, that I had had the knowledge for some time of the standing and distributing ability of Blyth & Company, whereas Lazard Freres had more recently been organized, and I did not have as much knowledge of its distributing ability.

Q. Is your friendship with Mr. Russell as close or as great as your friendship with Mr. Mitchell or Mr. Lieb or Mr. Hoover?

A. No, I know Mr. Mitchell and Mr. Lieb and Mr. Hoover much better than I know Mr. Russell.

Q. Are you acquainted with Mr. Charles R. Blyth? A. I am.

Q. How long have you known him?

A. I believe I met him first in connection with a proposed refunding of San Joaquin Light & Power Corporation bonds in 1926.

Q. His firm headed that issue?

A. I believe they headed it jointly with Pierce, Fair & Company.

Q. Do you usually call on Mr. Blyth when you are in San Francisco?

(Testimony of James Fogarty.)

A. Yes, I would say that I usually do.

Q. Did you, in any manner, between January 1st, 1935, [1552] and Mr. Hochenbeamer's death, do anything to assist Blyth & Company in getting substantial participation, or in their efforts to get the leadership of applicant's financing?

A. No, I did not.

Q. Did you have anything to do with Blyth & Company's being able to get a portion of the management fee in later issues of 1935 financing?

A. I did not.

Q. Do you know anything about why their position was improved? A. No, I do not.

Q. Do you now recall any conversations which you have had with Mr. Hochenbeamer during 1935 relating to applicant's financing?

A. No, I do not recall having had any conversations with Mr. Hochenbeamer concerning Pacific Gas & Electric Company financing.

Q. So you would say that you never suggested to Mr. Hochenbeamer during 1935 that he give the leadership of applicant's financing to Blyth & Company? A. Yes.

Q. Did you ever make the statement to anyone that you were surprised that Mr. Hochenbeamer did not follow your suggestions and give Blyth & Company the leadership of [1553] applicant's financing?

A. No, I do not recall ever having made such a suggestion.

(Testimony of James Fogarty.)

Q. And you never gave any instructions to Mr. Black on the subject, for him to convey to Mr. Hochenbeamer? A. No.

Q. Now, in March 1936, before the March 1936 issue of the applicant, Mr. Black had become president of the applicant. Did you have any discussions with Mr. Black prior to his leaving New York to assume the presidency of the applicant regarding the necessity of a large refinancing program of the applicant in the comparatively near future?

A. No.

Q. Were you aware of the fact that such refinancing would be advisable within a short period?

A. No, I don't recall that I was.

Q. It is your best judgment now that the matter was never under consideration by yourself and Mr. Black prior to the time that he became president of the applicant? A. Yes.

Q. Was Mr. Black in New York between the date that he left here to take the presidency of the applicant, and the refinancing of March 1936, do you know?

A. It is my recollection that the first time I saw Mr. [1554] Black after he left the North American Company was when I saw him in San Francisco in July 1936.

Q. Did Mr. Black confer with you concerning the advisability of financing which took place in 1936 of the type of security to be issued, and get

(Testimony of James Fogarty.)

your ideas of the price at which the bonds could be sold?

A. No, I do not recall any time that Mr. Black sought advice as to the type of securities or the coupon rate or the price, but I had had conversations with him concerning the bond market and conditions in general.

Q. Do you know who formulated the refinancing plan which took place in March of 1936?

A. No, I do not.

Q. Did you keep Mr. Black closely in touch with market conditions shortly before this issue was sold?

A. No. My discussions with him on such matters were when he raised the question.

Q. Before Mr. Black left for San Francisco in November of 1935, what discussions, if any, did you have with him regarding the leadership of applicant's next piece of financing?

A. When he left San Francisco?

Q. Before he left for San Francisco.

A. Oh, none.

Q. At that time had you ever heard Mr. Black express the opinion that, for one reason or another, Lazard [1555] Freres were not the most desirable house to head applicant's financing?

A. I don't recall it specifically, but during the eight years that Mr. Black was in New York, he acquired a familiarity with the standing of the large investment banking firms, and he may have felt, as I indicated before, that I would have felt, that

(Testimony of James Fogarty.)

a newly organized firm would not be as effective as a firm of the standing and recognized distributing ability of Blyth & Company, but I do not recall his having expressed such an opinion.

Q. Well, was Mr. Black familiar with your views on the advisability of Lazard Freres & Company heading applicant's financing?

A. I don't recall, but he might have discussed that. My answer to your question before, I assumed was intended to be an expression of opinion rather than anything I may have said at the time, if the question had been raised with me.

Q. Would you say that Mr. Black was unfamiliar when he took over the presidency of the applicant, with your views on the standing of Lazard Freres & Company and their ability to distribute securities?

A. I would not say whether he knew what I thought or not, and my thought about it would have arisen only if the question had been raised.

Q. And you do not recall any discussions concerning [1556] future syndicate management with Mr. Black after you knew he would be president of the applicant, and prior to the time of the March 1936 issue? A. No.

Q. Now, after Mr. Black became president of the applicant, what conversations, if any, did you have with him regarding the leadership of applicant's next piece of financing?

A. None that I recall.

(Testimony of James Fogarty.)

Q. You never indicated to Mr. Black that a syndicate headed by Blyth & Company would be agreeable to the North American Company?

A. No, I do not recall the question having been raised.

Q. When did you first receive knowledge that the leadership of applicant's March 1936 issue would be headed by Blyth & Company?

A. I cannot identify any of these issues, but it is my recollection that my knowledge of it came in connection with the filing of registration statement and announcement of the underwriting syndicate.

Q. Do you recall what contacts, if any, you had with representatives of Blyth & Company between the date of Mr. Hochenbeamer's death and the sale of the $90,000,000 issue?

A. No, I do not. I don't recall any discussions with them of the matter. When you asked about my contacts with [1557] them, I, of course, from time to time would meet Mr. Lieb, but if your questions refer to discussions of the matter, I recall none.

Q. I believe the evidence shows that it was during that interval that Mr. Mitchell became associated with Blyth & Company. Do you recall having had any conversations with Mr. Mitchell subsequent to the time that he became associated with Blyth & Company and prior to the time Blyth & Company got the leadership of applicant's financ-

(Testimony of James Fogarty.)

ing, and prior to the time of Blyth & Company's desire to get such leadership?

A. No, I do not recall.

Q. Did you ever discuss the matter with Mr. Williams? A. No, not to my recollection.

Q. Mr. Williams never advised you of a discussion of the subject which he had with Mr. Mitchell on one occasion?

A. No, I don't recall that he did.

Q. Did Mr. Williams ever indicate to you that he would rather see Blyth & Company head applicant's financing than Lazard Freres & Company?

A. No.

Q. Do you know who determined the percentage or the respective participation of the various banking houses which participated in the March 1936 syndicate?

A. No, I do not. I assume that that was determined by the officers of the Pacific Gas & Electric Company, but [1558] I have no knowledge of it.

Q. Do you know who selected Blyth & Company as the syndicate manager of that issue?

A. No, but I assume that that decision was made by the officers of the Pacific Gas & Electric Company.

Q. Have you ever, since the formation of that syndicate, discussed with Mr. Black the leadership of Blyth & Company? A. No.

Q. Did you suggest to anyone that Dillon, Read & Company, Kuhn, Loeb & Company, and Morgan

(Testimony of James Fogarty.)

Stanley, receive substantial participations in the March 1936 issue? A. No, I did not.

Q. Do you know at whose suggestion these houses were given substantial participations?

A. No, I do not.

Q. Do you know from whom you first learned that they would be included in the syndicate?

A. No, I do not recall how I first learned of it, but I do recall that there was a substantial increase in the number of members of the syndicate as compared with previous financing, and at some time later I learned, or it was stated to me, that on account of the size of the issue, that it had been deemed advisable to have other large firms in as substantial participants. Just when I learned of that, I do not recall. [1559]

Q. Did Mr. Black confer with you prior to the time a list of underwriters was made up which composed this syndicate, and did he seek your advice as to what banking houses that syndicate should contain? A. No, he did not.

Q. Did you, or any other representative of the North American Company, to your knowledge, have anything to do with Dillon Read & Company's inclusion in that syndicate?

A. No, not so far as I can recall.

Q. Did Mr. Williams ever indicate to you that the firm of Dillon Read & Company should be given a participation in applicant's financing?

(Testimony of James Fogarty.)

A. I don't recall that he ever raised the question.

Q. Mr. Williams and Mr. Dillon of the firm of Dillon Read & Company are close personal friends; are they not, Mr. Fogarty?

A. I know they have known each other for many years. I don't know how close their friendship is.

Q. Did Dillon Read & Company request you to assist them in getting the participation which they got in this syndicate?

A. Well, I don't recall that specifically, but I should not be a bit surprised if somebody from Dillon Read & Company did not speak to me about the matter.

Q. Do you recall whether or not you communicated their [1560] wishes, if any were voiced, to Mr. Black?

A. No, I do not. When Mr. Black, during the time Mr. Black was in New York, he had come to know Mr. Forestol of Dillon Read & Company, and Mr. Forestol of Dillon Read & Company might very well have felt that he could talk to Mr. Black himself, so that I am not sure that Mr. Forestol or any one else at Dillon Read spoke to me about it, although, I say, they may have.

Q. According to applicant's Exhibit No. 42, the applicant issued $30,000,000. principal amount of bonds in May, 1936, and $35,000,000. in October, 1936, and Dillon Read & Company, Kuhn, Loeb & Company, and Morgan Stanley & Company were not members of the underwriting syndicates which

(Testimony of James Fogarty.)

purchased these issues. Do you know why these three houses were not included in those syndicates?

A. No, but I recall, and it may have been Mr. Black who told me, that at the time those three firms were included in one of the large issues of Pacific Gas and Electric Company, that there was an understanding that that inclusion was for that particular issue only, and without any future commitment.

Q. Did you have anything to do with the determination of the leadership or the membership of the two underwriting syndicates which purchased the May and October, 1936 issues of the applicant?

A. No. [1561]

Q. Did Dillon Read & Company ever express to you any dissatisfaction over their exclusion from these syndicates? A. No.

Q. Did Mr. Black confer with you prior to the approval of the applicant's Board of the financing which occurred in May and October of 1936?

A. No, I don't recall that Mr. Black conferred with me about Pacific Gas and Electric Company's financing in advance at any time except in connection with inquiries concerning the bond market in which he may have said, "We are perhaps thinking of a possible refunding."

Q. Have you ever carried on any negotiations with Blyth & Company when it was acting as syndicate manager of the issues put out by the applicant?

(Testimony of James Fogarty.)

A. No, I have never participated in any negotiations concerning Pacific Gas and Electric Company's financing.

Q. Did you recommend to Mr. Black the price which, in your opinion, the applicant should receive for the stock since he became President?

A. No.

Q. The record shows that the applicant privately placed a $15,000,000. bond issue in 1938. Did you have anything to do with the determination of the applicant to sell the $15,000,000. of bonds to several insurance companies and one bank rather than to the public? [1562] A. No.

Q. Did Mr. Black consult you on the advisability of the private placement rather than public sale? A. Not that I recall.

Q. Will you describe the difference between the work done by you in your capacity as Chairman of the Executive and Finance Committee of the North American Company, or in your previous position of president, in connection with the applicant's financing and with that done by you in connection with the North American Company's subsidiaries?

A. Either as president or Chairman of the Executive and Finance Committee of the North American Company, I have not participated in any discussions or negotiations with respect to financing of the Pacific Gas and Electric Company.

Q. Whereas you have had a very active part

(Testimony of James Fogarty.)

in such matters with reference to North American Company subsidiaries? A. That is correct.

Q. Could you say what percentage of the gross income of the North American Company is represented by the dividends received from its holdings of applicant's common stock, for any particular year, like 1939?

A. Dividends on North American holdings *or* Pacific Gas and Electric Company's common stock represent perhaps 25 percent, or 20 percent, of the North American Company's corporate gross income.

[1563]

Mr. Phleger: Excuse me, on a consolidated basis?

The Witness: That is why I said corporate.

By Miss Calkin:

Q. Does North American have debentures outstanding? A. Yes.

Q. Without the receipt of dividends from the applicant, could the North American Company meet its fixed charges? A. Yes, indeed.

Q. Could it meet its preferred stock dividend requirements? A. Yes.

Q. Would you say that the relationship which you have stated has existed between the North American Company and the applicant in the past was due primarily to the fact that applicant's business has enjoyed a normal growth and has progressed in a satisfactory manner? A. Yes.

Q. You would not say, would you, Mr. Fogarty,

(Testimony of James Fogarty.)

that North American would not take a more active part in the affairs of the applicant in which it has an investment representing the market value or approximately $60.-odd million, if conditions changed in such a manner that earnings were materially decreased and its ability to pay dividends on its common stock seriously threatened?

A. I don't think a drop in earnings of the Pacific [1564] Gas and Electric Company, or a change in its dividends, would be warrant for taking any active part in its management. If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation.

Q. And in what manner would the situation be different? I mean, to what extent would the contacts which you have had in the past with the applicant be changed?

A. Why, I think that if such a condition as I have just referred to were to arise, I think we would examine pretty closely into the matter, discuss it with the local Board of Directors, and develop some thought as to how such a situation could be corrected or improved.

Q. In other words, it would be a fair statement to say that if the applicant's affairs had not progressed as they have in the past, the North American Company would probably have taken a more active part in the affairs of the applicant than it has?

(Testimony of James Fogarty.)

A. No, I would not say that. The statement I made as to what action the North American Company might take had to do with a set of circumstances which would indicate improper or incompetent management, and the company's earnings could fail to progress without such a condition developing. [1565]

Q. If the North American people should reach the conclusion that the management of the applicant were incompetent, what action would it take?

A. We would discuss the question with the directors of the company.

Q. If such a situation arose, would you and Mr. Freeman take a more active part in the directors' meeting than you had in the past, Mr. Fogarty?

A. Yes, I believe we would, until the situation had been corrected at least.

Q. I believe the record shows that neither you nor Mr. Freeman have ever attended any meetings of applicant's Board of Directors. Why have you felt your attendance at such meetings was not necessary in view of the substantial investment of the North American in the applicant?

A. Well, the position of the company was a strong one. Its credit was good. The rates were low. Public relations were good. The company was well operated. In general, the situation did not seem to require any more attention from us.

Q. As directors at least you would become more active if any of those situations changed?

(Testimony of James Fogarty.)

A. Well, we would make inquiry as to the cause of such changes that took place, and upon the nature of those questions would depend the action we would take. [1566]

Q. If a situation arose in the affairs of the applicant which led you to the conclusion that the applicant would be benefited by the North American Company exerting a controlling influence over its affairs, would you take such steps as in your opinion were necessary to result in the exercise of such controlling influence?

A. Well, we would submit those views to the management and directors, and whether or not any action that would be based on those views would be taken would depend entirely upon the acquiescence and support of the management and directors of the company.

Q. But if the managers and directors of the company differed—if there arose a sharp difference of opinion between you and the management and directors on a particular matter, what steps would you take to oust the management?

A. I don't know that under those circumstances we could take steps to oust the management. But whatever action we would take would depend upon the circumstances that gave rise to that. It is extremely difficult to answer such a hypothetical question.

Q. Was the relationship between the North

(Testimony of James Fogarty.)

American Company and Pacific Gas & Electric Company at all times harmonious?

A. So far as I know. [1567]

Q. And the same has been true during Mr. Hockenbeamer's and Mr. Black's connection?

A. Yes.

Q. And there has been no sharp difference of opinion between Mr. Hockenbeamer and Mr. Black since the North American Company has had a substantial interest in the applicant?

A. No, except that one episode concerning the reduction of dividend.

Q. But that was never brought to a sharp issue. You made a request, as I understand it, that the dividend reduction be considered and when that request had been ignored, you did not push the matter any further.

A. I would say it was something more than a request. I think Mr. Dame and Mr. Black probably explained pretty clearly to Mr. Hockenbeamer the North American Company's feeling about the matter.

Q. But neither you nor Mr. Freeman went out and attended the Board meeting to express your views at a Board meeting?

A. No, neither of us was a director at that time.

Q. You do not recall that Mr. Earle was instructed at that time to make any particular complaint?

(Testimony of James Fogarty.)

A. If I recall correctly, the matter was brought up by the Executive Committee or the Board, and I believe by Mr. Earle. But that didn't alter the situation. [1568]

The Examiner: He brought the matter up with the Board of the applicant, the Executive Committee of the applicant, P. G. & E.?

The Witness: Yes, of the applicant.

By Miss Calkin:

Q. It is your best judgment that the question of reduction of dividends was reconsidered by the Board at the request of North American Company?

A. It is my recollection that the matter was brought up by the Board. Whether the directors decided they would reconsider it, and then decided after such reconsideration to allow the reduction to stand, or whether they felt at the time they had so fully considered the matter as to not reconsider it, I would not know.

Q. I believe on direct examination you testified that in your opinion North American Company had not at any time in the past exercised any controlling influence over the management or policies of the applicant. Upon what facts do you base such an opinion?

A. Because I know of no action that the North American Company has ever taken with regard to Pacific Gas & Electric Company which would constitute an act of management or of supervision and

(Testimony of James Fogarty.)

direction of the management of the Pacific Gas & Electric Company.

Q. I believe it is your testimony that at no time [1569] with the exception of the dividend matter, has the North American Company recommended concretely and definitely that certain action be taken by the Pacific Gas & Electric Company in respect to any matters.

A. Not to the best of my recollection.

Q. And during the approximately ten year period that it has had a substantial investment in the applicant, it has not followed a policy of making suggestions and recommendations with regard to either major or minor problems concerning the applicant's management. A. That is correct.

Q. And it is your testimony, then, that the North American Company has not at any time, in any manner, supervised the affairs of the applicant.

A. That is correct.

Q. And your contact with applicant's representatives has been in the nature of getting information to determine the value of your investment and its status and things of that nature, rather than in making the contact which resulted in your making suggestions and recommendations as to what applicant should do. A. That is correct.

Q. Mr. Fogarty, do you recall that Mr. Miller was in New York at the time the dividends were reduced, and called you or some other representative of the North American Company [1570] and

(Testimony of James Fogarty.)

requested that you join him in a request for the Board to reconsider reduction of the dividends?

A. I do not recall specifically that Mr. Miller was in New York, but he probably was because I have a recollection that Mr. Dame and Mr. Black discussed the matter with him.

Q. You stated that you had only made one business trip to California, and you have been there on several occasions. Were your other trips on vacations?

A. Yes, I would say principally so.

Q. Did you pay your own expenses on those trips? A. I did.

Q. They were not paid by the North American Company? A. No, they were not.

Q. So that you did not go out and look over the applicant's properties primarily—that was not primarily what you went for?

A. Yes, and any information that the North American Company got as the result of any discussions I have had on those trips, the North American Company have gotten without expense.

The Examiner: Except in so far as you are paid a salary for looking after the company's interests.

The Witness: Yes.

By Miss Calkin: [1571]

Q. After your first conversation with Mr. Miller concerning Mr. Black's presidency, did you take the matter up with Mr. Williams?

(Testimony of James Fogarty.)

A. No, I did not.

Q. Was he in the city at that time, do you recall?

A. I do not recall. He may have been, but I undoubtedly discussed the matter with him before Mr. Black went out there. But when you ask the question as to whether I took the matter up with him, you mean——

Q. I mean before you advised Mr. Miller he was, in effect, free to go ahead and discuss the matter with Mr. Black?

A. No, I do not recall that I did.

Q. You testified on direct examination, since Mr. Black has been President of the company you discussed with him such matters as rate reductions, proposed refundings, and other matters; did those discussions, generally speaking, occur prior to the time definitive action was taken thereon by applicant's Board, and did Mr. Black seek your advice, or was he simply talking with you about the problems that were before the Board at that particular time?

A. In connection with the gas rate litigation, it is my recollection he told me that a proposal was going to be made to the Board that it be settled on the contemplated basis, and I felt he was advising me as a director of a [1572] matter that was going to come before the Board. Any discussion concerning financing had to do with conditions in the bond market, in the course of which he may

(Testimony of James Fogarty.)

have mentioned he was making a survey, possibly looking toward a refunding or a financing.

Q. You testified, I believe, Mr. Fogarty, no representatives of the North American Company had ever been present at a stockholders' meeting of the applicant. Did you mean that neither yourself nor Mr. Freeman—I mean, none of the North American representatives—or did you mean to include Mr. Earle in that statement?

A. No, I was not thinking of Mr. Earle at the time and I do not recall that he attended any stockholders' meetings; but I was thinking particularly of the officers of the North American Company.

Q. You let the question of Mr. Earle's successor on the Executive Committee lapse because you did not deem it was of sufficient importance to North American's interest to have a successor appointed?

A. Yes. Apparently the matter went on. Nothing was done about it. And I do not recall that that was a matter of a particular division.

Q. I think that vacancy was later filled by Mr. Palmer. Did Mr. Black ever discuss with you the placing of Mr. Palmer on the Executive Committee?

A. I don't recall that Mr. Black discussed a particu- [1573] lar individual—discussed with me the question of a particular individual becoming a member of the Executive Committee, but I do believe that Mr. Black and I discussed the question of the North American officers being on the Execu-

(Testimony of James Fogarty.)

tive Committee. That is my recollection. And I know my feeling would have been that with a small body such as an Executive Committee it would not have served any useful purpose to have a member who lived three thousand miles away on the Committee.

Q. Did Mr. Black take up with you the selection of Mr. Livermore to serve on the Executive Committee?

A. No. I do not recall that Mr. Black discussed with me the appointment of any particular individual to the Executive Committee.

Miss Calkin: I think that is all.

Redirect Examination

By Mr. Phleger:

Q. Mr. Fogarty, you have been asked at various times, and in various forms, as to whether or not you recall whether your lack of activity as a director had been due to the fact that the company has been prosperous and well managed. And that has been followed by a question as to whether in the event that the company was not well managed, in your opinion, whether you would then take a more active interest, to which, if I recall, your answer was yes. Would that in- [1574] creased activity on your part and on the part of Mr. Freeman as directors of Pacific Gas & Electric Company representing the North American, be anything other than would be expected as directors?

(Testimony of James Fogarty.)

A. No, I feel that Mr. Freeman and I as directors of the company represent all of the stockholders. And we would have to consider the interests of our stockholders in any action that we as directors would take.

Q. And this increased activity of yours would be merely increased activity as directors in the way of attending meetings and discussing the company's affairs with others, would it not?

A. Yes, and looking toward correcting the situation which had developed.

Q. Yes, correcting it by inducing the other directors to join with you in some corporate action which you felt would be advantageous to the applicant. A. That's right.

Q. And as such, advantageous to all stockholders including the North American Company.

A. That's right.

Q. Did you contemplate any other, or different, form of action? A. No, indeed.

Q. Now, with respect to increased activity by North [1575] American as a stockholder, would that increased activity be anything different than normal stockholders' activity with respect to proper management of the company in which they had an investment?

A. No, it would not. Instead of increased activity, I think it might be more properly described as an action taken at the time because of conditions which then existed, if they did become existent.

(Testimony of James Fogarty.)

Q. Your increased activity, Mr. Fogarty, would not be any different than the activity which Mr. John D. McKee, as a director, might take, would it? A. No, it would not.

Q. It would be an endeavor as a director of Pacific Gas & Electric Company to so exercise your powers as such a director as to produce the maximum in the way of good management for the company?

A. It would be the kind of activity in which I would engage if I were director of any corporation.

Q. And the same thing is true of your stock interest and your activity as a stockholder, would it not be? A. That is correct.

Q. So that it would be fair to say, would it not, Mr. Fogarty, that your activity under those circumstances would be just like the activity of any other individual member of the Board of Directors of the company, or any other [1576] individual stockholder? A. That's right.

Q. For instance, if I owned one hundred shares of stock of P. G. & E. and I felt the management was a bad one, and I proceeded to try and carry that message up to the stockholders as a whole for the purpose of correcting that management, my activity would be no different in kind than the North American's increased activity would be, would it? A. No, it would not.

(Testimony of James Fogarty.)

Q. And any influence which the North American Company might have as a stockholder along that line would be no greater than the merit of its criticism, would it? A. That is true.

Q. And the same criticism in the mouth of a holder of a thousand shares resident in California you would assume would have the same effect, would it not? A. Yes, I think it would.

Q. And the same thing is true with respect to any increased activity of a director if you, as a director, feel that the management was wrong, your attitude with respect to that and your desire to correct it would be no more than the influence of an informed director carrying the message to the rest of the directors. A. That's right. [1577]

Q. And any power and authority that you might have in either the position of director or stockholder would be merely one of conveying information, and the message, if I might call it such, to the others similarly situated with yourself, with the idea you could convince them that a certain particular action would be in the interest of all the stockholders of the Pacific Gas & Electric Company? A. Yes.

Q. Is that a fair statement? A. It is.

Mr. Phleger: I think that is all.

The Examiner: Any further recross examination?

Miss Calkin: Just a couple of questions.

(Testimony of James Fogarty.)

Recross Examination

By Miss Calkin:

Q. In the event, Mr. Fogarty, that something came to your attention which you felt reflected poor management, or the execution of unwise policies in reference to the applicant, would you not first take the matter up with Mr. Black?

A. Yes, of course.

Q. And you would not submit the matter to and make an issue of it before the Board of Directors until Mr. Black had refused to take such steps to correct the situation as you felt might be advisable? [1578]

A. I should not think it desirable that a matter should be taken up before the Board of Directors until all facts had been developed, and if a situation had developed or occurred which required correction, and the management did not or would not take steps to correct it, then I think that the procedure would be to take the matter up with the directors of the company.

Q. Don't you feel, Mr. Fogarty, or rather, wouldn't you expect that a suggestion made by you or by Mr. Freeman as directors of the North American Company would carry greater weight and receive more consideration than a similar suggestion or recommendation made by small stockholders, particularly in view of the fact that the North American Company has been engaged in

(Testimony of James Fogarty.)

the utility business for the last approximately fifty years?

A. Well, it may be that because of the activity of the North American Company in the utility field, that the matter might be considered one to which attention should be promptly given, but the fact that the suggestional recommendation came from the North American Company, I do not believe would be a determining factor in its acceptance. I think the merit of the suggestion or recommendation would be the sole answer to that.

Q. But you do feel, do you not, that if a complaint came from you to the management, it might well be given [1579] more consideration and more immediate attention than if it came from some very small stockholder residing in the company's territory, or outside of the company's territory?

A. No. I would say if there was any difference it would not be in the form of more consideration. Being a suggestion that came from a large stockholder and through a member of the Board of Directors, it might be brought to the attention of the Board more promptly in an informal way, perhaps. But the amount of consideration that it would be given, it does not seem to me would be greater or less because of its source.

Q. Wouldn't you expect that if Mr. John Smith called Mr. Black on the telephone from Sacramento and said, "I hold ten shares of the stock of your company and I don't like a particular action which

(Testimony of James Fogarty.)

was taken by the Board at a particular time," Mr. Black would not give that protest the consideration he would give if you made a similar call and a similar complaint?

A. I think that would depend on the circumstances. If Mr. John Smith advanced good, sound reason for his objection to the action of which he was complaining, I am sure that he would receive consideration.

Q. Did you, as President of the North American Company, give the same consideration to the complaints of [1580] holders of ten shares of stock as you gave to the complaints or suggestions of your large stockholders? A. Yes, we have.

Mr. Phleger: If the ten shares stockholder in Sacramento were to say, "Mr. Black, I think the policy which the P. G. & E. is maintaining with respect to the City of Sacramento is rotten," do you think he would give as much attention to that suggestion as if you telephoned from New York and said you thought the public policy in Sacramento was poor?

The Witness: I think he would feel that the man in Sacramento was very much better qualified to have an opinion about it.

By Miss Calkin:

Q. You do not mean to convey the impression, do you, Mr. Fogarty, that the North American Company could not, if it chose, exercise a greater

(Testimony of James Fogarty.)

influence over the management of the applicant than it could exercise if its holdings were substantially less than they are now, or were those other stockholders?

A. I do not think that the degree of influence of the North American Company over the Pacific Gas & Electric Company is any greater than it would be if their holdings were considerably smaller than they are.

Q. If your holdings were considerably smaller, it [1581] is very possible that you would not be entitled to two members or three representatives on the applicant's Board. You might not even have any representation on the applicant's Board, that is true, is it not? A. Yes, that is true.

Q. Then, in that sense, at any rate, you would not be in a position to exercise the controlling influence over applicant's affairs that you can exercise in view of the fact that you have very large holdings.

A. The difference is that the officer of the North American Company being a director of the Pacific Gas & Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by the Board and two officers of the North American Company being directors and participating in that capacity as directors, are in a different position

(Testimony of James Fogarty.)

from a small stockholder who is not a director.

[1582]

Q. So the representation by the North American Company of applicant's Board does put North American Company in a position to acquaint the Board not only with its views, but to take whatever steps it deems necessary to influence the other directors in the formulation of the policies of the applicant?

A. Yes, but no more so than any other director, where he owned a hundred shares, or no stock at all would have.

Redirect Examination

By Mr. Phleger:

Q. Mr. Fogarty, do you believe that you and Mr. Freeman, as two directors out of fifteen in the Board of Pacific Gas and Electric Company, have any more influence or prestige or standing than any other two directors out of the fifteen?

A. No, I do not.

Q. As a matter of fact, you probably have less than some groups that I could name, don't you think?

A. Well, it might very well be, because of the long reputation of the Pacific Gas & Electric Company for being an independent company, a California company, largely owned in California, and managed by a Board of Directors consisting of Californians, I think in the case of the Pacific

(Testimony of James Fogarty.)

Gas and Electric Company, the situation is not that which might prevail generally in the case of a company having a large stock interest. [1583]

Q. If a meeting of the directors was held and a matter was up for consideration and you and Mr. Freeman were on one side and Mr. C. O. G. Miller and Mr. John D. McKee were on the other side, would you say that you and Mr. Freeman would have any greater influence with the Board than those two?

A. No, I think the degree of influence would depend on the merits of the case.

Q. Exactly. That the Boards would act as individual directors exercising their best judgment for the benefit of all the stockholders of the company. Is that about right? A. Yes.

Recross Examination

By Miss Calkin:

Q. But if there were no difference of opinion and you and Mr. Freeman attended Board meetings of the applicant regularly, you would be in a position, by virtue of being directors of the applicant, to very possibly alter the views of the meeting on any particular question which was up at that meeting?

A. We would be in a position to present our views, and if the other directors felt that those views were sufficiently meritorious, I assume that they would agree, but, then, that would be true if we

(Testimony of James Fogarty.)

were two directors of the company and had no connection at all with the North American [1584] Company.

Mr. Phleger: Did you ever hear the story of the flea that was sitting on the back of a great coach in France, and as the coach proceeded to run along the road, said, "Oh, what a great cloud of dust I raise!"

Q. Mr. Fogarty, the fact that you happened to agree with the rest of the directors would not lead to the conclusion on your part, would it, that you were controlling or directing the others?

A. Indeed not.

Q. You were just going in the same direction at the same time? A. Yes.

By Miss Calkin:

Q. But your opinions might influence the officers of the Board if they were expressed at that meeting?

A. It depends on what those opinions were, of course.

(Discussion off the record.)

The Examiner: We will recess now until ten o'clock tomorrow morning.

(Whereupon, at 5:00 o'clock p. m., the hearing was adjourned until January 16, 1941, at ten o'clock a. m.) [1585]

Proceedings

The Examiner: Proceed.

Mr. Phleger: Will you take the stand, Mr. Freeman?

Whereupon:

HERBERT C. FREEMAN

called as a witness by and on behalf of the Applicant, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Mr. Freeman, where do you reside?

A. At 960 North Broadway, Yonkers, N. Y.

Q. What is your occupation?

A. I am a Vice-president of the North American Company.

Q. How long have you been associated with the North American Company?

A. Since July, 1927.

Q. What was your occupation prior to that date?

A. From 1902 until 1920 I was engaged in public accounting. I was a partner of the firm of Touche, Niven & Company. From the beginning of 1921 until April, 1927, I was Vice-president and General Manager, and later President of the National Cloak & Suit Company, a mail order business located here in New York.

(Testimony of Herbert C. Freeman.)

Q. Since 1927, you have been continuously with the North American Company? [1587]

A. Yes, sir.

Q. In what capacities have you served with the North American Company?

A. For the whole time I have been Vice-president and Director, and a member of the Executive Committee, and later the Executive and Finance Committee.

Q. And what, generally, are your duties with the company?

A. They are quite broad. Of course, on account of my previous accounting training, I perhaps get more into the matters of accounting that affect the Company and its subsidiaries. I also have a good deal to do with their financing, with any contracts that come up for discussion—general matter of policy.

I have had a good deal to do with the matters affecting the subsidiaries, other than the public utilities. I have also been a director of Wisconsin Electric Power and Cleveland Electric Illuminating, and for part of the time of the Washington Railway and Electric, and I have kept in touch with their affairs.

And since 1936, I believe it is, I have been a director of Pacific Gas and Electric, and have watched its accounts.

Q. Mr. Freeman, have you any connection, any business connection, with any firms or corporations

(Testimony of Herbert C. Freeman.)

other than North American Company, or companies in which it has stock holdings? [1588]

A. Businesses—I don't quite follow you. You mean businesses which are not subsidiaries of North American, but in which North American has holdings?

Q. Yes. Have you any business connection with any companies other than those which North American has interests in? A. No.

Q. Do you own any stock in the Pacific Gas and Electric Company?

A. No, sir. I have qualifying shares which belong to the North American Company.

Q. When did you become a director of the Pacific Gas and Electric Company?

A. I am sorry; I can't recall the exact date. I should have looked it up. It was——

Q. Would December 16, 1936, appear to you to be about right?

A. That sounds—it was some time in 1936.

Q. Yes. Whom did you succeed as a director?

A. I believe I succeeded Mr. Doolittle.

Q. And Mr. Doolittle was Vice-president of the North American Company, was he?

A. Yes, sir.

Q. And he retired from active service with it at or about the time that you became a director in Pacific Gas and [1589] Electric Company?

A. Yes, sir.

(Testimony of Herbert C. Freeman.)

Q. Do you know Mr. D. H. Foote?

A. No, I don't believe I have ever met Mr. Foote.

Q. Do you know Mr. C. O. G. Miller?

A. No, sir.

Q. Do you know Mr. John D. McKee?

A. No, sir.

Q. Do you know Mr. Norman B. Livermore?

A. No, sir.

Q. Do you know Mr. Allen L. Chickering?

A. I have met Mr. Chickering on one occasion, when he was in New York. He was passing through New York, and he made more or less a social call on us.

Q. And that is the only occasion on which you have ever seen or corresponded with him?

A. Yes, sir.

Q. Do you know Mr. Paul M. Downing?

A. Yes, I have met Mr. Downing on two or three occasions when he had been in New York.

Q. Were those social or business calls?

A. They were more of a nature of social calls than business calls, as far as we were concerned. He came in to see us because he was in New York.

Q. Yes. [1590] A. On other matters.

Q. Did you discuss P. G. & E. affairs with him other than in a cursory way? A. No.

Q. Do you know Mr. Frank P. Coghlan?

A. Yes, I have met Mr. Coghlan.

Q. How often, and where?

(Testimony of Herbert C. Freeman.)

A. On one or two occasions, when he had been in New York, in just the same way as Mr. Downing.

Q. I see. Do you know Mr. Charles K. McIntosh? A. No, sir.

Q. Did you know Mr. Frank B. Anderson in his lifetime? A. No, sir.

Q. Do you know Mr. Silas H. Palmer?

A. No, sir.

Q. Do you know William W. Crocker?

A. No, sir.

Q. Did you know Henry D. Nichols?

A. No, sir.

Q. As to these gentlemen whom you say you don't know, I take it by that answer you mean you have never met them, nor had correspondence with them; is that a true statement?

A. That is true, yes, sir.

Q. Do you know Mr. A. E. Wishon?

A. Yes, I have met Mr. Wishon several times—I think [1591] once or twice since 1930, when his company was acquired by the Pacific Gas and Electric Company. I had also met him prior to that, when he was an officer of the whole Western Power and subsidiaries.

Q. Have you ever attended a meeting of the Board of Directors of the Pacific Gas and Electric Company? A. No, sir.

Q. Have you ever been in California?

A No, sir.

(Testimony of Herbert C. Freeman.)

Q. Have you ever suggested the name of or participated in the election or selection of any director or officer of the Pacific Gas and Electric Company? A. No, sir.

Q. Do you know Mr. James B. Black?

A. Yes.

Q. How long have you known him?

A. Since I became Vice-president of the North American Company. He was at that time a Vice-president.

Q. You came with the North American shortly after he did; is that right? A. Yes, sir.

Q. Is he connected with the North American Company now? A. No, sir.

Q. When did he sever his connection with it?

A. The latter part of 1935, following the death of [1592] Mr. Hochenbeamer.

Q. At the time of his selection as President of the Pacific Gas and Electric Company?

A. Yes.

Q. Has he any connection now with the North American Company? A. No, sir.

Q. Has he had any connection with the North American Company since he became President of the P. G. & E.? A. No, sir.

Q. During the time that Western Power Corporation held the majority ownership, or ownership of the majority of the outstanding stocks of Great Western Power Company and San Joaquin Light

(Testimony of Herbert C. Freeman.)

& Power Corporation, and the Midland Counties Company, were you closely in touch with the affairs of those latter companies?

A. Fairly closely. I would say in substantially the same way as I am now with the affairs of the various subsidiaries of the North American Company. Q. I see.

A. It was not—I was not primarily charged with following their affairs, but I did keep in touch with them.

Q. Yes. Those companies, up until the time that the stock which the Western Power Corporation held in them in 1930—were treated in the same manner as other North [1593] American subsidiaries were treated at that time, were they not?

A. Yes.

Q. Will you describe generally what supervision or advisory services were performed by North American for the Great Western and San Joaquin Companies following the time you came with the North American Company, and up until 1930, when it disposed of its interest in those companies to the Pacific Gas and Electric Company?

A. We advised with them whenever necessary on matters of financing. We discussed with them their construction budgets, any major projects. We kept in touch with them in connection with rates. I don't know to what extent there were any changes in their management organizations there; I don't

(Testimony of Herbert C. Freeman.)

recall. But those would be matters in which we would keep closely in touch with them.

On matters affecting their public relations, their relations with the State Commission, we would keep in touch with them. We supervised, at long range, of course, the preparation of their annual reports. We had drafts of their annual reports, went over them.

The only reports which I recall at that time they had to make to any Federal bodies were the questionnaires of the Federal Trade Commission, and I personally supervised that.

They prepared the reports, and sent them to me in New [1594]York, and I had correspondence, discussion with them of those reports. I think that is about the extent of it.

Q. Is it a fact that during that period no major transaction occurred on the part of those companies without the matter being first submitted to the North American Company for its advice or recommendation? A. That is a correct statement.

Q. Now, with respect to accounting matters, were the accounts of those companies generally supervised by the North American Company?

A. Only as to matters of principle, because their accounts are subject to control of the California Commission, and it would only be matters over which the company had any control from the point of view of policy that we should be consulted.

(Testimony of Herbert C. Freeman.)

& Power Corporation, and the Midland Counties Company, were you closely in touch with the affairs of those latter companies?

A. Fairly closely. I would say in substantially the same way as I am now with the affairs of the various subsidiaries of the North American Company. Q. I see.

A. It was not—I was not primarily charged with following their affairs, but I did keep in touch with them.

Q. Yes. Those companies, up until the time that the stock which the Western Power Corporation held in them in 1930—were treated in the same manner as other North [1593] American subsidiaries were treated at that time, were they not?

A. Yes.

Q. Will you describe generally what supervision or advisory services were performed by North American for the Great Western and San Joaquin Companies following the time you came with the North American Company, and up until 1930, when it disposed of its interest in those companies to the Pacific Gas and Electric Company?

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(Testimony of Herbert C. Freeman.)

Q. They followed, did they not, in their general accounting practices in those respects which were not prescribed by regulatory bodies the general form and rules followed by all North American subsidiaries?

A. I could hardly say that we had any general forms or rules as applied to any of our subsidiaries, except that we did ask them to report to us monthly on certain uniform rules, so that we could have a monthly report on all of our subsidiaries in more or less uniform shape.

Q. Was the material that was collected in that matter [1595] again redistributed among the various subsidiaries, including these companies, in order that they might have comparative experience with other subsidiary companies?

A. Not the purely accounting reports, but reports of operating costs, production costs, and certain other details of operating costs, which could be expressed in statistical form, were first reported to us and then distributed in comparative form to our subsidiaries for their information.

Q. And those reports were both submitted by these particular subsidiaries and in return the comparative material was forwarded to them for their advice; is that correct?

A. I am quite sure that that happened. I haven't looked specifically to see whether they were included.

(Testimony of Herbert C. Freeman.)

Q. Did the North American Company, during that period, furnish tax advisory service to these subsidiaries?

A. As to Federal taxes, income taxes, and matters of that kind, yes. [1596]

Q. With respect to financial matters, were the negotiations for the issue and sale of securities of these subsidiaries conducted by the North American during this period?

A. Yes, to the extent that there were any such transactions. During the large part of that period, however, they financed their expansion in the form of loans, so their occasions for going to the market for money were not very numerous, although they were spending a great deal of money.

Q. I think the record shows that there were some bonds of the San Joaquin Light & Power Corporation sold during that period. You have specific recollection of that?

A. I know about it. I am inclined to think that that was prior to 1927. My recollection on that is not quite clear. I knew about it, but if it happened after 1927, Mr. Black, I think, would have had more to do with it than I had.

Q. But if it happened during that period, it was conducted by the North American Company; was it not? in behalf of subsidiaries?

A. Oh, yes.

Q. With respect to rate matters, what services, if any, were furnished to the subsidiaries by the North [1597] American Company?

(Testimony of Herbert C. Freeman.)

A. I would say general advisory service. I do not recall any detailed routine service that was rendered. It would only be in connection with proposed rate changes.

Q. Those would be submitted, would they not, to the North American Company? A. Yes, sir.

Q. In advance of being put into effect?

A. Yes, sir.

Q. Was any service rendered in connection with sale or promotion matters?

A. I would say in a very general way. At that time we had no officer who was specifically charged with that duty. Mr. Black, however, would have kept in touch with it, based on his experience.

Q. Do you know whether or not the officers of these subsidiaries were members of and anticipated in what is known as the Station Advisory Committee?

A. I cannot answer that from my own knowledge. I think they did participate, but I am not—I would not be able to answer that specifically.

Q. Did these companies, during this period, have the benefit of your North American group purchase contract? A. Yes.

Q. Did these companies maintain at the office of the [1598] North American Company in New York transfer and secretarial offices?

A. I believe they did. I cannot say specifically whether we handled their transfer work.

(Testimony of Herbert C. Freeman.)

Q. Did the North American charge the subsidiaries for the services rendered them by the North American Company?

A. We had a method at that time of apportioning the costs of certain of our departments over our subsidiaries, and the North American Company upon a rough approximation of the time spent for the different companies, and it is my recollection that the Western Power properties bore their share of that. Certain of our officers were also officers of subsidiary companies, and those companies paid salaries for those officers to the North American Company, or to those officers who, in turn, turned them over to the North American Company, and I believe there were certain of our officers served in that capacity for the Western Power properties.

Q. When did these services which the North American rendered to the Great Western, San Joaquin, and Midland Counties terminate?

A. They terminated in 1930, at the time of the transfer of those properties to the Pacific Gas & Electric.

Q. Did you receive any payment from the Pacific Gas & [1599] Electric Company for your services as a director, or otherwise? A. No, sir.

Q. Does Mr. Fogarty receive any payment from it? A. No, sir.

Q. As a director, or otherwise?

A. No, sir.

(Testimony of Herbert C. Freeman.)

Q. Do you know anything about the circumstances surrounding an election or selection of Mr. Black as President of the Pacific Gas & Electric Company?

A. I didn't personally participate in the discussions of that with anybody in California, but I was kept advised from time to time of what transpired.

Q. You know nothing of your own knowledge?

A. No.

Q. Do you consider Mr. Black a North American representative? A. No, sir.

Q. You receive, as a director of Pacific Gas & Electric Company, certain reports, do you not, from that company? A. Yes.

Q. I show you applicant's exhibit number 33. Does that exhibit show typical forms of the reports which are sent to you periodically (handing bulletin to witness).

A. All of the forms that are here are typical forms. [1600] The income statements and the balance sheets that we receive are not here.

Q. It is noted that they are not but they are?

A. Yes. It is noted. We receive those monthly in the form that I understand they are submitted to the Board and the Executive Committee.

Q. What do you do with those reports when you receive them?

A. I look them over, notice any changes. Occasionally, I would say very occasionally, I am asked for some information on some points and then they

(Testimony of Herbert C. Freeman.)

are sent to anybody else in the office who may be interested, and filed.

Q. How frequently do you communicate with the Pacific Gas & Electric Company, or any of its officers or employees?

A. Very infrequently, I would say not more than a half-dozen times a year, perhaps.

Q. Do you have any telephone communication with them?

A. I don't recall ever having initiated a telephone call. There have been one or two occasions when Mr. Black has spoken to me when Mr. Fogarty was not in.

Q. What has the subject matter of those conversations been?

A. My recollection is that they were to advise us of arrangements that he had made for financing. I don't recall any others. [1601]

Q. To tell you that they had, or were about to sell some securities? A. Yes.

Q. Would you state generally what the subject matter of your correspondence has been?

A. I think it is limited entirely, or almost entirely, to matters that were developed out of the reports. I have inquired about their cash working capital; I have inquired about the water situation. Once or twice I have asked them the reason for certain changes in their expenses, as I remember it, particularly, the general commercial expenses.

(Testimony of Herbert C. Freeman.)

Q. Were they all requests for information on your part arising out of questions which came to your mind after examining these reports?

A. Yes, as to these reports, they have been entirely of that character. I think in connection with the annual reports I have made at least one suggestion. I do not recall others, as to the form of the report.

Q. You wrote Mr. Black once, suggesting that you thought it would be better to put the income account before the balance sheet. Is that the situation?

A. I remember that, yes, it was purely a matter of presentation. Hadn't anything to do with the substance of the report.

Q. Is the draft of the annual report of the company [1602] submitted to you before it is printed and sent out?

A. No, it is sent to us before it is printed and sent out, but I don't think we ever had a chance to get in any comments before it was actually printed.

Q. So that, as a practical matter, you are really not consulted in connection with the preparation of that report?

A. I think that is a fair statement.

Q. Have you attempted to influence or control in any way the management, policy, or actions of the Pacific Gas & Electric Company?

(Testimony of Herbert C. Freeman.)

A. No, sir.

Q. Do you know of any attempt on the part of the North American Company, or any of its officers, to influence or control the management, policy, or actions of the Pacific Gas & Electric Company?

A. No, sir.

Q. Are the management or the policies of the Pacific Gas & Electric Company subject to a controlling influence, either directly or indirectly, by the North American Company? A. No, sir.

Q. Does the North American Company control the Pacific Gas & Electric directly or indirectly?

A. No, sir.

Q. Are you the officer who, on behalf of the North [1603] American Company, signs and returns the proxy for the stockholders' meetings of the Pacific Gas & Electric Company?

A. I don't know whether I have invariably done it. I think probably I have.

Q. Have you any particular recollection of the circumstances surrounding which that is done?

A. No, there has been nothing to make it register with me particularly. It has been a matter of normal procedure. We have had no reason to register any particular feeling one way or the other about it.

Q. To the best of your recollection, you simply get the regular proxy and sign it and return it?

A. Yes, we look to see that the directors representing the North American Company are included

(Testimony of Herbert C. Freeman.)

in the slate for the election, but, otherwise—I can go further than that—we look to see whether the slate is the same as it was previously, but, other than that, I don't think we have ever had occasion to raise any question with regard to a proxy statement.

Q. Has the Pacific Gas & Electric Company ever borrowed money from the North American Company? A. No, sir.

Q. Has the North American ever borrowed any money from the Pacific Gas & Electric Company?

[1604]

Q. Has the Pacific Gas & Electric Company, with the exception of the transaction when it acquired the properties, ever had any business transactions with the North American Company?

A. I believe not. I have no recollection of any.

Q. Are there any outstanding contracts, or agreements, between the North American Company and the Pacific Gas & Electric Company?

A. No, sir.

Q. Has there ever been any such, to your knowledge, with the exception of the 1930 transaction?

A. No, sir.

Q. Do you know who the attorneys for the Pacific Gas & Electric Company are?

A. At the moment, I cannot recall their names.

Q. Do you know who the accountants of the Pacific Gas & Electric Company are?

(Testimony of Herbert C. Freeman.)

A. Haskins & Sells.

Q. Are they the accountants for the North American Company? A. No, sir.

The Examiner: What was the answer?

The Witness: No, sir.

Mr. Phleger: I think that is all.

Miss Calkin: May we have a short recess? [1605]

The Examiner: We will take a short recess.

(Whereupon, a short recess was taken.)

After Recess

The Examiner: Are you ready for cross examination, Miss Calkin?

Miss Calkin: Yes.

The Examiner: You had completed your direct, had you not, Mr. Phleger?

Mr. Phleger: Yes.

Cross Examination

By Miss Calkin:

Q. Mr. Freeman, did you participate in any manner in the negotiations which preceded the acquisition by the applicant of the securities of the subsidiaries of Western Power Corporation?

A. Not in the negotiations.

Q. Did you talk with anyone regarding the proposed transaction?

A. I was kept advised in New York by our own people as to what was being discussed.

Q. You never had any conversations with Mr.

(Testimony of Herbert C. Freeman.)

Hockenbeamer directly prior to the acquisition of the securities? A. No.

Q. Who carried on these negotiations on behalf of the applicant, if you know? [1606]

A. Mr. Black and Mr. Gruhl.

Q. At that time did you overhear any discussions as to the applicant's insistence that the North American Company occupy only the position of an investor in the event it acquired a substantial block of applicant's common stock?

A. I knew that was one of their—one of the points that they had in mind in the negotiations.

Q. Well, what do you know about that matter?

A. I think they—perhaps I should say feared that if we acquired such a large amount of stock, we might attempt to go further and secure control of the company; and the Board out there, I think, would have been very averse to anything of that kind, and probably would not have agreed to this transaction if they had thought that was our intention.

Q. Did Mr. Dame or Mr. Gruhl or Mr. Black state what, if anything, was told the applicant's representatives as to what the North American Company's future attitude would be toward the applicant?

A. Based on such discussions as I had in New York, I would say that the applicants were told that it was not our intention to move in and secure control.

(Testimony of Herbert C. Freeman.)

Q. Was there any discussion as to the extent to which the North American Company would participate in the [1607] affairs of the applicant?

A. I think it was always understood that we would not attempt to take any part in the management of the company.

Q. Do you know of any other situation in which the North American Company has acquired as much as 17 per cent of the voting securities of an operating utility company in which it did not seek to dominate or supervise the affairs of the operating company?

A. I think that would be true only as to Detroit.

Q. Who in the North American organization was primarily interested in the North American investment in applicant's securities during the period from 1930 to '35?

A. I did not quite catch the first part of your question.

Q. Was there anyone in the North American organization from 1930 to '35 whose primary duties were to look after the North American investment in the applicant?

A. It was Mr. Black's primary duty to do that.

Q. Then who succeeded to his duties upon his becoming president of the applicant?

A. I would say that as to accounting matters, well, let me put it this way: I would say that we, all of us, watched the thing more directly and as a matter of our primary duty, than we had done when

(Testimony of Herbert C. Freeman.)

Mr. Black was there. [1608] In accounting matters, for example, I would pay more attention now than I thought it necessary to do when Mr. Black was there. Possibly as to their financial position, Mr. Fogarty may pay more attention now than he did when Mr. Black was there, but we have always worked more or less as a team in the North American, and Mr. Black would keep us advised at all times of what was going on, but he did not attempt to keep us advised of minor points that came to his attention.

Q. You mean, that was during the time when Mr. Black was with the North American?

A. Yes.

Q. Or since then?

A. During that time. Due to his familiarity with the properties on the Coast, Mr. Black had a more intimate picture of that whole situation than anybody else in the North American system, and he did not attempt to convey that to us all of the time as to matters of detail, but he kept us advised as to all important matters in just the same way that we now have to keep ourselves advised.

Q. Is there anyone today in the North American organization that has the intimate acquaintance with the applicant's business that Mr. Black had during the time he was there?

A. No, I doubt if there is. We are none of us as [1609] much acquainted with the situation in California as Mr. Black.

(Testimony of Herbert C. Freeman.)

Q. You, yourself, have never been in California?

A. No.

Q. So that you have no first-hand knowledge of applicant's properties, or operating system?

A. No.

Q. I believe you testified, Mr. Freeman, that you never attended a meeting of applicant's directors. Why have you felt that it was not necessary that you attend such meetings?

A. It has not been a question of feeling that it was not necessary. It has simply been a matter of it not being practicable for me to attend. As a director, I would like to attend those meetings, but we are so far away and it is so hard to plan ahead to be there in a specified time to attend a meeting, that it just has not been practicable.

Q. Well, did you ever know Mr. Guy C. Earl?

A. No, I did not know him.

Q. You never met him?

A. I don't think I ever met him. If I did, it is just possible that he was in New York sometime during that period when we were interested in the Western Coast properties, but at the moment, I do not recall. If so, I [1610] just met him casually.

Q. Mr. Earl, I believe, died just a few months before Mr. Black became President of the applicant. During his lifetime did Mr. Earl correspond with you, or Mr. Fogarty, or did he carry on his correspondence with Mr. Black regarding the applicant's affairs?

(Testimony of Herbert C. Freeman.)

A. My recollection is that it was almost entirely with Mr. Black. He and Mr. Black, of course, had worked together when Mr. Black was in California and they knew one another, so it would be normal to correspond with Mr. Black. He may, for all I know, have communicated with Mr. Dame or Mr. Gruhl.

Q. Well, you knew that from the period between 1930 and 1935, the North American Company was paying Mr. Earl a salary? A. Yes.

Q. And that during that time, his own duties were to attend meetings of the Board, applicant's Board of Directors and its Executive Committee, and furnish such information as he gained from such meetings and his other contacts with the applicant to the North American Company?

A. Yes, that is all the service he rendered for that salary. Of course, Mr. Earl had been an officer of the Western Power group, and to some extent the salary we paid him was by way of not terminating his connection too abruptly. [1611]

Q. Now, when Mr. Earl died, what discussions took place relative to his successor, that is, someone that would perform the same duties for the North American Company which Mr. Earl had performed during his lifetime?

A. I think it was discussed, and I think we rather felt that while he had been keeping Mr. Black and the rest of us advised, through Mr. Black, of a great many details, we could unques-

(Testimony of Herbert C. Freeman.)

tionably get direct from the company all the essential facts that we needed to regarding our investment; and I don't think that we, any of us, felt that there was any real necessity to have anybody succeed Mr. Earl.

Q. Well, if Mr. Black had not been made president of the applicant in November of 1935, would a successor to Mr. Earl have been selected by the North American Company?

A. I don't think that would have made any difference. There was nobody that was in just the relationship to the North American Company as to the California properties that Mr. Earl was, and I doubt very much whether, if we had felt no obligation at all to Mr. Earl, we would have thought it necessary to have him occupy himself to the extent he did in sending us this information.

Q. Well, if Mr. Black had not been made president of the applicant, Mr. Freeman, would you have, in the past, attended meetings of applicant's Board of Directors?

A. I can't answer that, because there never has been [1612] a time when I could get away from New York long enough to attend a meeting, and I doubt if it would have made any difference. I don't think it would.

Q. Why has the North American Company only two representatives on applicant's Board when it was entitled to three such members, according to the oral agreement which the evidence shows was

(Testimony of Herbert C. Freeman.)

entered into between Mr. Black and Mr. Hockenbeamer in 1930?

A. Well, there was nothing, I would say, very binding about that agreement. It was a general understanding. I think the way Mr. Hockenbeamer expressed it in the statement he made to the press, was that North American was to be accorded three seats on the Board, and a member of the Executive Committee. It was simply by way of a working understanding as to how far we expected to be represented, and there was no reason, really, why we should have had three at that time, any more than two. Three directors wouldn't give us a control of the Board, and there was no purpose in our appointing another director, when he possibly might not have been able to spend any more time attending meetings.

The real purpose of our having directors on the Board is to enable us to keep advised, as directors, of our investment.

Q. But there was and is a correlation between the [1613] percentage of your voting securities, though, and your proportional representation on the Board, is there not, Mr. Freeman?

A. I think probably we could elect two directors by cumulative voting. I have never figured out whether we could elect two or not. That question has never arisen.

Q. Three directors is one-fifth of the total number of the Board, and you held approximately one-

(Testimony of Herbert C. Freeman.)

fifth of the voting securities of the applicant at that time, did you not, or still do?

A. Well, it is nearer one-sixth than one-fifth, I think. In other words,——

Q. You can't split a man in two.

A. With cumulative voting, I think we could only definitely elect two directors. We couldn't elect three. But that had nothing to do with the decision not to ask for three directors. One reason probably was that our organization in North American was being quite severely contracted, and as far as we were concerned, it would have been just as impossible for three of us to plan to be represented at the directors' meeting there as it would for two of us.

Q. But there is no——

A. When I say impossible, I mean difficult and impractical.

Q. But there had never been any question in your mind [1614] that if the North American Company wanted to have three representatives on the applicant's Board, you would be given permission to have such representation?

A. Well, I don't know. I mean, the question hasn't come up. I should think probably if we asked for it, the Board would agree that it was the understanding at the time we acquired our investment, and they would let us have three. I don't think there would be any question about it.

(Testimony of Herbert C. Freeman.)

Q. Does the fact that Mr. Black is president of the applicant make it less necessary that North American have full representation on the Board than would be true if Mr. Black were not president of the applicant?

A. I don't think that makes any difference.

Q. Who determined that North American should not insist upon its full representation on applicant's Board?

A. It was a general decision that we all came to. I don't think any individual person decided it. I think it was discussed and we decided that there was no point in asking for three members.

Q. Have you ever heard any representative of the North American Company say in substance that its representation on applicant's Board is not as necessary since Mr. Black became president as it was prior to his presidency?

A. No, I don't recall anybody having said that.

[1615]

Q. And I believe you testified on direct examination that you did not consider Mr. Black a representative of the North American Company on applicant's Board at the present time, or at any time since he has been president of the applicant?

A. No, we have never so regarded it.

Q. Have you, as a director of the applicant, ever suggested the name of any person to serve on applicant's proxy committee? A. No.

(Testimony of Herbert C. Freeman.)

Q. Has Mr. Black ever conferred with you as to who should constitute the members of this committee? A. No.

Q. Has North American Company ever solicited any proxies for the Annual Stockholders' Meetings of the applicant?

A. I don't think so. I am not quite sure if I understand your question. If the company had needed any particular vote for a meeting, and they had thought we were in a position to get a proxy for them, I think we might very well have done that; I mean, if it was a question of calling up some institution here in New York and asking them to send in their proxy. But it would have been the regular management proxy; it wouldn't have been seeking a proxy by North American. [1616]

Q. Well, do you know whether or not that has ever been—I mean, North American has ever been requested to do that by the applicant?

A. I haven't any recollection of it. I only suggested it might have happened.

Q. What discussions, if any, have you had with Mr. Black concerning the personnel of the applicant's Board?

A. When Mr. Black has been here, which has been very infrequently, he has talked to us about the men on the Board, telling us what their affiliations with the company have been, why they were selected as members of the Board. He has tried to keep us advised of things of that kind.

(Testimony of Herbert C. Freeman.)

Q. Well, now, I think the record shows that three or four members of applicant's Board have gone on the Board since Mr. Black has become president. Has Mr. Black, or did Mr. Black, confer with you regarding the selection of men to fill the vacancies which those men were selected to fill?

A. No.

Q. He never discussed with you the selection of Mr. Palmer or Mr. McIntosh or Mr. Nichols as directors? A. No.

Q. Do you know whether or not he conferred with any other representatives of the North American Company regarding men to fill those vacancies?

[1617]

A. Not to my knowledge. I think I should have known if he had.

Q. How does the North American Company advise the applicant who it desires to represent it on the applicant's Board?

A. I think when there have been changes, as for example, when Mr. Doolittle retired from North American Company, they were advised, either directly by letter by telephone, I don't know which, but when it comes to reelecting the Board, we assume that our representatives will be included in the slate and we see that they are. The question has never come up, and, of course, there haven't been many changes since Mr. Black has been out there. Mr. Hockenbeamer, I am quite sure, would have just taken it for granted that the representatives

(Testimony of Herbert C. Freeman.)

we had designated were to be re-elected unless we informed them to the contrary.

Q. In your opinion, has North American Company been better informed, or advised, as to various matters pertaining to the applicant since Mr. Black has become president than it was during Mr. Hockenbeamer's presidency?

A. I don't think there has been really any difference. I think possibly we have been less fully advised because of the fact that before Mr. Black became president, he personally had this contact with California, and was informed more of details. There is only one thing that occurs to [1618] me, and I don't know whether this is a fair statement either, when the dividend was reduced during Mr. Hockenbeamer's lifetime, we were not even informed that such a thing was in contemplation. Now, I do think that in view of the fact that Mr. Fogarty and I are directors, Mr. Black would try to inform us of a thing of that kind before it happened. To that extent, I—but I don't know that Mr. Hockenbeamer was in a position to inform us. I think perhaps he was not, and I don't want to appear to question his not letting us know. With that general observation, I don't think there is really very much difference.

Q. Did Mr. Black inform you that he was going to recommend the increase of applicant's dividend in 1933 on its common stock before that increase was passed on by the Board?

(Testimony of Herbert C. Freeman.)

A. I rather think he did. I don't recall specifically. I did not personally have any discussion with him on it, but I rather think he would have advised us.

Q. Does Mr. Black furnish your company with substantially the same information that was furnished by Mr. Earl during his lifetime?

A. Well, as to reports, documents, and specific information, I would say we get substantially the same. What Mr. Earl added was more in the way of personal comment and of greater detail. He sent more detailed statements as [1619] to what happened at the meetings that he attended, the discussions, and so on, whereas what we get now are the Minutes.

Q. Well, did you have an understanding with Mr. Black before he left New York to become president of the Pacific Gas & Electric Company, as to what material would be sent to you after he began acting as president?

A. No, there was no discussion as to any change in the nature of the information. We expected to receive just the same reports and matters of that kind as we always had done.

Q. During Mr. Earl's lifetime he sent to you directly the copies of the Minutes of the meetings of the Board, and the Executive Committee, that were furnished to him when he was present at the meetings; did he not?

A. Yes, I think that was probably true. You

(Testimony of Herbert C. Freeman.)

mean, that instead of getting those through Mr. Earl——

Q. Through a director who was present at the meeting.

A. We would get them direct. But I think that arrangement was made after Mr. Earl's death and before Mr. Black went to California.

Mr. Phleger: I think the record shows that in July of 1935, after Mr. Earl's death, before Mr. Hockenbeamer's death, that Mr. Hockenbeamer gave an order to Mr. [1620] Foote to send on the same material that Mr. Earl had been sending on. That is Commission's Exhibit No. 5. So I figure that Mr. Black had nothing to do with it.

The Examiner: This would be in accordance, then, with Mr. Freeman's recollection.

Mr. Phleger: I just wanted to call that to counsel's attention in case she did not have it in mind. I noticed it the other day.

(Discussion off the record.)

By Miss Calkin:

Q. Does Mr. Black frequently consult you about major problems which he intends to submit to the Board before they are actually submitted?

A. No.

Q. Do you go over the Minutes of the meetings of the applicant's Board and Executive Committee when they are received by you or Mr. Fogarty?

A. Yes.

(Testimony of Herbert C. Freeman.)

Q. After reviewing the same, what action, if any, do you take thereon?

A. I don't recall ever having had occasion to take any action. I have read them for information and then they have been filed.

Q. Are you supplied with what might be called the agenda of the Directors or Executive Committee meetings [1621] prior to the time the meetings are held?

A. No, I don't think we are. I am pretty sure we are not.

Q. From the reading of these Minutes, have you ever been apprised of some action taken by the Board with which you did not agree?

A. No, I cannot say that I ever have.

Q. So that you do not recall ever having voiced to Mr. Black any objection to any action taken by the applicant's Board? A. No.

Q. Why is the North American Company not now represented on applicant's Executive Committee?

A. It is impracticable. The only way in which that could serve any useful purpose would be if we had somebody in California who represented us and who could attend those meetings, but to have anybody in our New York organization on that committee would just be a nuisance because it would make it harder for them to get quorums.

Q. Does the fact that Mr. Black is now president of the applicant have anything to do with the

(Testimony of Herbert C. Freeman.)

decision of the North American Company not to have representation on this committee?

A. No, it has no relation to that at all. [1622]

Q. If Mr. Black were no longer president of the applicant, would North American insist upon its representation on this Committee?

A. I can't imagine that we would do so. Of course, that is assuming something which—that leads to the question as to who would the president if Mr. Black were not the president. If we thought there were a president there who was definitely hostile to North American's interests, although I don't know how he could affect them without affecting the interests of all the stockholders—but assuming that took place, that would create an entirely new situation. We would have to look at it.

Q. What, if anything, do you know about Mr. Black's selection as president of the applicant?

A. My information comes entirely from discussion with the other officers of the North American Company, and it goes back to the time when Mr. Miller called Mr. Fogarty and said that the Board out there would like Mr. Black to be made president of Pacific Gas. I don't think at that time he had consulted all of the members of his Board. I think he had consulted certain members of the Board, and was expressing their opinion.

Mr. Fogarty reported that to us and we discussed it. My recollection is that later Mr. Miller had canvassed more members of the Board, and re-

(Testimony of Herbert C. Freeman.)

peated his request, and, after [1623] discussion, we decided that we had no right to stand in Mr. Black's way; that it was quite a compliment to Mr. Black to call him back there to head that company.

We had every confidence that Mr. Black would handle the situation, and we consented.

Q. What conversations, if any, did you have with Mr. Black prior to his leaving for California to accept the presidency regarding his future attitude towards North American Company and its interests in the applicant?

A. I don't recall any specific discussion along those lines.

Q. Did you have any discussions with him concerning what his future contacts with the North American people on business of the applicant would be?

A. No, I am quite sure I didn't personally, and I don't think anybody else did.

Q. Do you know whether——

A. Nobody did, to my knowledge. We expected the relations between the companies that had always been agreeable would continue. We had no reason to think otherwise.

Q. You know nothing about any representations which were made by Mr. Black, if any, to the effect that he would confer with North American people regarding any major problems which would come up for his determination as president of the appli-

(Testimony of Herbert C. Freeman.)

cant, and seek their advice and recommendations concerning [1624] the disposition of the same?

A. No, I am sure there was nothing of that kind.

Q. Mr. Black never told you in substance, then, that he would consult with you or Mr. Fogarty or the North American representatives about applicant's problems before submitting the same to the Board for determination? A. No.

Q. To what extent has Mr. Black conferred with you regarding the applicant's problems since he has been president of the applicant?

A. He hasn't had occasion to consult with me individually to any extent. He would naturally speak to Mr. Fogarty, as the senior officer. The only discussions I think I have ever had with Mr. Black have been when he was—on one occasion he called me, because I think Mr. Fogarty was away, or was unavailable, to tell me of financing that had been arranged, that they proposed to do.

I think he may on other occasions have told me about the progress that was being made in the Hetch-Hetchy matter. These conversations have been in the way of informing us of what was going on, and not of discussing them before arriving at a conclusion.

Q. How recently have you seen Mr. Black, or how many times have you seen him since he became president of the applicant? [1625]

(Testimony of Herbert C. Freeman.)

A. I think I have seen him twice. My recollection is that he has been in New York twice, and has called in to see us. He didn't come either time specifically to see us, but he was in New York, and came in, and we discussed things in a general way.

Q. Could you be more specific concerning the subject matter of the conversations that you had with Mr. Black on these occasions you have seen him since he has been with the applicant?

A. My recollection is that the first time he was in New York—the only specific matter that stands out in my mind is that he told us who the members of that Board were, and what their interest in the company was, what their association with it was, and how they stood in the community. The last time he was here—I don't recall any specific matter that stands out. It was—I think early in the summer of last year we probably discussed the Hetch-Hetchy situation, but I don't think there was anything about that that he could tell us that we didn't know from the records.

I think our conversation was just generally about the affairs of the company.

Q. To what extent have you discussed with him the present application and proceedings based on the application?

A. Well, not at all directly, only in the—I think we have exchanged telegrams as to Mr. Fogarty

(Testimony of Herbert C. Freeman.)

and I being [1626] available for the hearings, but that is the extent of our——

Q. Do you know by whom the application for exemption was prepared?

A. No, I don't know.

Q. Well, do you know whether it was prepared in the offices of the North American Company or by the applicant?

A. Positively not in the offices of the North American Company.

Q. I believe you testified that you have talked to Mr. Black only twice that you can recall over the telephone since he has been president.

A. That's all I can remember.

Q. How many times, if any, have you talked to other representatives of the applicant since 1935?

A. I think since then I have talked to Mr. Downing, when he has been in New York.

Q. No, over the telephone.

A. Over the telephone?

Q. Yes.

A. I don't recall having talked to anybody on the telephone.

Q. Now, I believe you said that—you testified on direct examination that you had talked with Mr. Downing, Mr. Wishon, and Mr. Coghlan at various times since 1935 on the occasions when they had been in New York. [1627]

A. Yes.

Q. Could you state generally the substance of

(Testimony of Herbert C. Freeman.)

the conversation that you had with these gentlemen?

A. They were—in the case of all of these gentlemen, their visits have been more of what you might call a business-social visit. In other words, it was for the purpose of becoming better acquainted, renewing acquaintance, talking quite generally about the business that we were both interested in, but not for the purpose of discussing any particular subject.

Q. What other members of applicant's organization are you acquainted with, other than those that you have previously testified about?

A. The only other man I have met is a man whose name I can't remember. He was one of the officers of the subsidiary companies at the time they belonged to us, and I think most of my correspondence with them about the Federal Trade Commission questionnaires were with him; and he was in the East——

Q. Is that Mr. Hodges?

A. No, he was in the East, oh, a year or eighteen months ago, and he dropped in to see me.

Q. What are his duties with the applicant at the present time?

A. I am afraid I can't tell you. He just came in be- [1628] cause we had had this correspondence, and he thought that it would be nice to meet personally. And that was all. He had no particular business to discuss.

(Testimony of Herbert C. Freeman.)

Q. With whom——

A. And I have tried to remember his name, but I can't remember it.

Q. With whom in applicant's organization have you corresponded since 1935?

A. Mr. Black, Mr. Foote, Mr. Beckett. I believe those are the only ones.

Q. And you have testified on direct examination, I believe, that the nature of that correspondence was to seek—get additional information, and answer questions which arose upon your examination of the material which had been furnished you by the applicant?

A. That would be in connection with my—any letters I may have had to Mr. Black. I think with Mr. Beckett and Mr. Foote it has been more in the nature of acknowledging data that they have sent us, and then the formal information that they need for reports that they are filing. I don't believe I have had occasion to——

Q. Do you recall my having been in the offices of the North American Company in the Fall of 1939, Mr. Freeman? A. Yes.

Q. At that time I requested permission to examine all [1629] of the correspondence files of the North American Company which contained correspondence with the applicant. You recall my having made such a request? A. Yes.

Q. So far as you know, were all of the files of such nature given to me for examination?

(Testimony of Herbert C. Freeman.)

A. As far as I know, they were.

Q. Have you since that time examined the documents which I took copies of at the time I made that investigation?

A. I think I have. It was immediately after your visit.

Q. Would you say that the documents which I took copies of were typical of the correspondence which had been exchanged between you and the various officers of the applicant since 1930, and up to the present time?

A. I would say that except for simple acknowlments and forwarding of formal information, that they comprised practically all my correspondence.

Q. What was the extent of your contacts with Mr. Hockenbeamer during his lifetime?

A. My personal contacts consisted simply in meeting him on one or two occasions when he was in New York. I don't believe I ever had occasion to correspond with him or have any direct dealings with him.

Q. Will you enumerate all the instances, if any [1630] there were, in which you personally have made recommendations to the applicant in respect to any matter?

A. The only recommendation I can remember making was the very minor one with regard to the form of their annual report. I don't recall any other annual recommendation that I have made.

(Testimony of Herbert C. Freeman.)

Q. Well, in your discussions with Mr. Black, or with other representatives of the applicant, have you made suggestions as to improvements in the applicant's operating methods or financial policies, or any other matters pertaining to the applicant's business?

A. No, I can't say that I have.

Q. I believe you testified that applicant's Exhibit No. 33 contains, actually or by reference, copies of all the reports which are sent regularly by the applicant to the North American Company. Now, what reports are furnished you by the applicant irregularly, that is, which are not included in that exhibit by reference or otherwise?

A. The only one I recall is the annual report that is shown as the confidential report to insurance companies. We did receive that, I think, just as a matter of regular routine, up to a few years ago; and then, for some reason, it was discontinued, and when I found that we were not getting it, I asked if they would send us a copy of that. [1631]

Mr. Phleger: I believe that that is indicated in Exhibit No. 33.

By Miss Calkin:

Q. Well, to what extent——

Mr. Phleger: Exhibit 33 includes, among the reports regularly furnished, as Item No. 13, "Report for insurance companies prepared annually and mailed to larger insurance companies and many

(Testimony of Herbert C. Freeman.)

other institutions or investors." That is the report you refer to, is it not?

The Witness: That is in the index to the file, is it not?

Mr. Phleger: Yes.

The Witness: I don't think there is any reference to it in the body of the file.

The Examiner: Is that the report to which you refer?

The Witness: That is the report, yes, sir.

Mr. Phleger: Yes, I think you are right, it is stated in the index, but there is not a blank sheet for it.

The Witness: I did not notice it when I went through it.

By Miss Calkin:

Q. Now, in addition to what might be called reports, what additional information does the applicant furnish the North American Company? [1632]

A. I don't think there is any additional information beyond what is conveyed in the minutes of the meetings and such correspondence as we have had.

Q. Well, to what extent does Mr. Black advise you by correspondence of matters pertaining to the applicant's business?

A. I would say to a very small extent. He sends us, or, rather, I should say, he has sent us, during these past years, copies of the briefs that have been

(Testimony of Herbert C. Freeman.)

filed in their Gas Rate Case, matters of that kind. They have been sent either by Mr. Black or by his instructions, merely for our information and our files.

Q. Have you ever requested applicant to furnish you any information which it has refused to give? A. No.

Q. Do you frequently suggest a different course of action than that reflected in the reports which are sent you? A. No.

(Discussion off the record.)

By Miss Calkin:

Q. You stated, I believe, that the only time that you can recall ever having advised applicant on any particular thing was in connection with the annual stockholders' reports? [1633] A. Yes.

Q. So that there has never been any instance in which applicant's representatives have refused to follow recommendations or suggestions made by you? A. No.

Q. Because, according to your testimony, you have not made any?

A. That was the only reason.

Q. Would you say that in your opinion Mr. Black is more amenable to suggestions casually made by you than Mr. Hockenbeamer was?

A. I would say Mr. Black is well able to take care of himself under any conditions. In other words, we have not had occasion to make any casual

(Testimony of Herbert C. Freeman.)

recommendations, and I certainly would not pick Mr. Black as a man on whom I could creep up with any suggestions without his recognizing it.

Q. Has there ever been any difference of opinion between you and Mr. Black on any matter pertaining to applicant's business?

A. No, I cannot say that there has been.

Q. Have you and Mr. Fogarty ever discussed what course you would take if applicant's representatives indicated that they would not abide by any suggestions made by either of you in the event that you made any?

A. Well, we have never considered that eventuality. [1634] We have had more real troubles than would enable us to spend any time with the imaginary ones.

Q. What consideration do you think should be given suggestions which North American might make as applicant's largest stockholders?

A. I didn't quite catch the drift of that.

(Question read.)

A. I doubt if we have any status as large stockholders. After all, we have two directors on the Board, and any suggestions that we might want to make should normally be made by those directors. I think that is the way we would proceed if we had any suggestions.

Q. Would you make those suggestions in the first instance to Mr. Black and ask that he present your

(Testimony of Herbert C. Freeman.)

views to the Board; or would you attend a directors' meeting and present them directly?

A. Of course, these are hypothetical questions, but, as a director of any company, I would feel that if I had any matter to bring up at a Board meeting, that I was under obligation to discuss it with the executive officers before I brought it up. I do not think it is fair for any director to go into a meeting unless there is serious disagreement, to go into a meeting and present a matter to the Board of any importance unless the executive officers know that it is going to be presented. [1635]

Q. Do you go over applicant's budget either prior to the time it is submitted to applicant's Board, or subsequent thereto?

A. No, we have never gone over the budget.

(Witness temporarily excused.)

Whereupon:

EDWARD L. SHEA

called as a witness by and on behalf of the Commission, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Phleger:

Q. Where do you live, Mr. Shea?

A Locust Valley, New York.

(Testimony of Edward L. Shea.)

Q. What position do you hold with North American Company? A. President.

Q. How long have you been connected with it?

A. Since November, 1939.

Q. Prior to that date, did you have any connection with it?

A. For a few months prior to that time I was a director and a member of the Executive Committee.

Q. What was your occupation or profession prior to joining North American?

A. I was connected with the oil business. [1636]

Q. Do you know Mr. D. H. Foote?

A. No, sir.

Q. Do you know Mr. C. O. G. Miller?

A. I don't believe I do.

Q. Do you know Mr. John D. McKee?

A. I don't believe I do.

Q. Do you know Mr. Norman B. Livermore?

A. No.

Q. Do you know Mr. Allen L. Chickering?

A. No.

Q. Do you know Mr. Paul M. Downing?

A. I may have met him, I am not sure.

Q. Do you know Mr. John B. Coghlan?

A. No.

Q. Do you know Mr. Charles K. McIntosh?

A. No.

Q. Do you know Mr. A. E. Wishon?

A. No.

(Testimony of Edward L. Shea.)

Q. Do you know Mr. Silas H. Palmer?

A. No.

Q. Do you know William W. Crocker?

A. I think I do.

Q. Do you know Mr. Henry D. Nichols?

A. No.

Q. Have you ever, directly or indirectly, on any [1637] occasion, discussed the affairs of the Pacific Gas and Electric Company with any of the gentlemen whose names I have just read? A. No.

Q. Have you ever been at the office of the Pacific Gas and Electric Company in San Francisco?

A. No.

Q. Do you know Mr. James B. Black?

A. Yes.

Q. How long have you known him?

A. Less than a year.

Q. What were the circumstances of your meeting?

A. During visits to New York, Mr. Black came in to pay his respects, and we chatted for probably 15 or 20 minutes in my office.

Q. Is that the only occasion on which you have ever met him?

A. I think I have seen him once since that time.

Q. Where? A. In New York.

Q. Do you know what the occasion was?

A. I think it was just a courtesy call. I asked him whenever he was in town to come in and I would be glad to have him take lunch with me.

(Testimony of Edward L. Shea.)

Q. Would you say that you have seriously, on any [1638] occasion, discussed business affairs with Mr. Black? A. Not seriously, no.

Q. What correspondence, if any, have you had with Pacific Gas and Electric Company or any of its officers?

A. One letter addressed to Mr. Black within the last week or two, I think it was last week, in connection with a request for information connected with our integration problems.

Q. Have you talked with Mr. Black or any other officer of the Pacific Gas and Electric Company over the telephone?

A. I have talked with Mr. Black.

Q. How frequently?

A. I think not more than twice, I believe not more, than twice.

Q. Do you recall the subject matter of those conversations?

A. I believe the first talk was about the effect the new income tax law might have on the profits of the P. G. & E., and the second conversation was a few days ago when I told him that we were sending him a letter asking for certain information in connection with integration. I also told him that I understood I was going to be called in the hearing here and told him I did not see how there could be any background for the proceedings, as Judge Healy had made some kind of a comment, and so forth. [1639]

(Testimony of Edward L. Shea.)

Q. Mr. Shea, have you ever, on any occasion, suggested to the Pacific Gas and Electric Company, or any officer, that it do or refrain from doing any act? A. No, sir.

Q. Does the North American Company control the Pacific Gas and Electric Company directly or indirectly? A. No.

Q. Are the management or the policies of the Pacific Gas and Electric Company subject to a controlling influence, either directly or indirectly by the North American Company? A. No, sir.

Mr. Phleger: That is all.

The Examiner: Some questions, Miss Calkin?

Miss Calkin: I have a couple.

Cross-Examination

By Miss Calkin:

Q. Mr. Shea, is it true that for many years you were in business in the State of California?

A. No.

Q. Did you spend a great deal of time in California?

A. I used to visit California once or twice a year.

Q. But you have never been engaged in business in that state?

A. I have never had California as a residence.

[1640]

Q. Well, being in the oil business, I assume when you were in California, you were in that

(Testimony of Edward L. Shea.)

portion of the state in which oil fields and properties are located?

A. No, I spent most of my time in San Francisco.

Q. In San Francisco? A. Yes.

Q. But you never became acquainted with any of the men who are now directors of the applicant, except Mr.——

A. Now directors of——

Q. Mr. Crocker and Mr. Downing?

Mr. Phleger: "Applicant" means P. G. & E.

A. Oh, I met Mr. Crocker, I believe, socially, and I am not sure that I met Mr. Downing, but it is possible that I may have.

Q. Did you meet those gentlemen—did you meet Mr. Crocker and, if you met Mr. Downing at all, did you meet them prior to the time you became president of the North American Company?

A. Yes.

Q. And you had no occasion to discuss with them the business of the applicant? A. No.

Q. Do you own any of the securities of Pacific Gas and Electric Company?

A. Do I personally? [1641]

Q. Yes. A. No.

Q. You testified that you never had any serious discussions with Mr. Black on the occasion that he was in your office concerning the applicant's business. You did, however, discuss generally the affairs of the applicant, did you not, Mr. Shea?

(Testimony of Edward L. Shea.)

A. General business conditions on the Coast.

Q. And you have never made any recommendations or suggestions to Mr. Black or any representative of the applicant concerning the business of the applicant? A. No.

Q. When you became president of the North American Company, or at any time prior or subsequent thereto, did you have any conversations with Mr. Williams regarding the relationship between the applicant and the North American Company? A. None that I ever remember.

Q. You don't recall ever having discussed——

A. No.

Q. Have you ever discussed with Mr. Williams the investment of the North American Company in the Pacific Gas and Electric Company?

A. I am not sure what you mean. Can you give me a lead as to what you are—— [1642]

Q. Well, have you ever, in your conversations which I assume you have had with Mr. Williams since you became president of the North American Company, or prior thereto, discussed in any manner the investment of the North American Company in the common stock of the Pacific Gas and Electric Company?

A. We have discussed the investments of Pacific Gas and Electric and Detroit Edison at meetings at which Mr. Williams was present, but only in connection with our integration.

Q. Well, upon becoming president of the North

(Testimony of Edward L. Shea.)

American Company, did you form an opinion as to what the relationship between the applicant and the North American Company was?

A. Yes, I suppose I formed an impression, yes.

Q. And what is that opinion or impression?

A. That the relationship is one of an investor in the company.

Q. You testified that in your opinion, at least, the North American Company does ont exercise a controlling influence over the management or policies of the applicant. Why do you say that that is true?

A. Because I have seen no evidence of any effort to control it or influence it.

Q. Well, now, on your direct examination and on your [1643] cross-examination, have you testified concerning all your contacts which you have had with any representatives of the Pacific Gas and Electric Company?

A. To the best of my recollection, I have.

Q. Have you ever given any instruction to any one in North American Company respecting action which those persons should take in regard to the Pacific Gas and Electric Company? A. No.

Q. Have you discussed with Mr. Freeman and Mr. Fogarty the information received by them in the reports which are regularly sent by the applicant to the North American Company?

A. No.

Q. Do you personally go over those reports?

(Testimony of Edward L. Shea.)

A. I go over the income statements, and occasionally I review the Executive Committee report.

Q. But you do not discuss those with Mr. Fogarty or Mr. Freeman?

A. I have not heretofore, no.

Q. Who in the North American Company's organization would you say was in closest touch with the affairs of the applicant?

A. Mr. Freeman and Mr. Fogarty.

Q. Are you acquainted with the fact that in 1930 there [1644] was an oral understanding between Mr. Hockenbeamer and Mr. Black that the North American Company would be entitled to three representatives on applicant's Board of Directors and one member on its Executive Committee?

A. I hadn't been aware of it until the last few days.

Q. Do you know why the North American Company now has only two representatives on applicant's Board, and no representatives on its Executive Committee? A. No.

Q. That matter has never been up for discussion at the Board of Directors' meetings of the North American Company?

A. Never, to my knowledge, or—let me correct that—not in my presence, during the time that I have had any connection with the company.

Miss Calkin: I think that is all.

(Testimony of Edward L. Shea.)

The Examiner: Do you have any questions, Mr. Phleger?

Mr. Phleger: That is all.

The Examiner: You are excused, Mr. Shea. Thank you.

(Witness excused.)

The Examiner: We will recess until 2:30.

(Whereupon, at 12:20 o'clock p. m., a recess was taken until 2:30 o'clock p. m.) [1645]

Afternoon Session

(Hearing was resumed, pursuant to recess)

2:30 P. M.

HERBERT C. FREEMAN

resumed the stand, and testified further as follows:

Cross Examination

(Continued)

By Miss Calkin:

Q. What knowledge does come into your possession, Mr. Freeman, regarding the budget of the applicant?

A. We see the authorization. We do not actually see the budget of proposed expenditures, but we do

(Testimony of Herbert C. Freeman.)

see the total of authorizations against those proposed expenditures.

Q. Now, is that what is referred to as the G. M. Estimates?

A. No, the G. M. Estimates are a part of the proposed expenditures.

Q. Now, in what form do you see those?

A. If I may refer to that exhibit I can show you.

Q. I hand you Exhibit No. 33 (handing witness exhibit).

A. There is a statement of the total amount authorized for construction. I beg your pardon, they do call it Statement of G. M. Construction Work in Progress by Departments as of end of the month, and that shows the total amount authorized for construction. [1646]

Q. For the ensuing month?

A. No, for any time in the future, the amount actually authorized and against that the amount expended to the end of the month, and then a balance column showing the amount required to complete the work. That is all we see with respect to future commitments for construction.

Q. Now, is that a report prepared for the Executive Committee meetings?

A. It is a report that is presented—it is submitted monthly, I think, to the Board. That is presented to the Executive Committee monthly. Then there are statements showing details of the actual

(Testimony of Herbert C. Freeman.)

expenditures as between new construction and retirements reserve charged.

Q. Do any members of the North American organization assist the applicant in the preparation of its budget? A. No.

Q. Have they ever done so? A. No.

Q. Have you ever conferred with Mr. Black or Mr. Hockenbeamer regarding contemplated major construction projects of the applicant?

A. No.

Q. You have never made any suggestions regarding advisability of any such projects?

A. No. [1647]

Q. To what extent does Mr. Black give you authority concerning contemplated major construction work?

A. I don't know of any routine method by which he keeps us advised, and as far as I can recall there haven't been any such projects that he has taken up with us.

Q. You don't recall his discussing with you any contemplated construction work? A. No.

Q. Could you state what type of problems that you, as a representative of the North American Company, and as a director of the applicant, think that Mr. Black should present to you and seek your advice on before taking final action, or before final action is taken by the Board?

(Testimony of Herbert C. Freeman.)

The Examiner: (To reporter) Will you repeat that question?

(Reporter repeated the question.)

A. I should feel that there would be no real obligation on Mr. Black to take up any matters with us unless there was some difference of opinion in his Board. If he had any contemplated action on which his Board was undecided, was divided, and he wanted to see how we felt about it, there might be some point then in his discussing it with us. Apart from that, I should think that knowing the importance to us in making our future plans of the dividend policy of Pacific Gas & Electric, if he thought there was [1648] going to be any change in that, that he should take it up with us, bring it up and discuss it with us, so as to give us an opportunity to make our voice heard in connection with it.

In other words, it seems to me that anything that affects North American as a stockholder he ought to take up with us as the directors representing North American, but that anything that relates to the management of P. G. & E. as such—if he has got a united Board behind him, he doesn't have to consult with us. If he did consult with us, it would be because he thought we could possibly contribute something in the way of knowledge of the subject, or advice; and he might do that——

Q. Well, assuming that the construction of a

(Testimony of Herbert C. Freeman.)

hydro-electric plant was contemplated, which would require some new financing, which it was not thought would affect, or, at least, adversely affect the earnings of the company, in your opinion should Mr. Black consult with you about the construction of that plant before the matter was finally determined by the Board?

A. I don't think there would be any real necessity for him to do that. After all, the company is a utility, it must furnish service, and if, in order to do that, they have to expand their plant, it is something that is peculiarly within the control of the local management, and they [1649] will have a much better opinion of it than we could have at this distance.

The fact that it requires the financing wouldn't really change the position, because whether they have got the money or not, they have got to have the capacity, and he doesn't ordinarily consult with us. In fact, he has never consulted with us as to any financing that he proposed to do ahead of his discussion with his bankers and finding out what he can do in arranging terms.

So that I don't see why he should discuss with us a project which would lead to the necessity for financing.

Q. Well, have either you, or, to your knowledge, any other representative of the North American Company, ever indicated to Mr. Black the type of problem which you thought he should confer

(Testimony of Herbert C. Freeman.)

with you on prior to the time that definitive action was taken by the company?

A. No, I don't think we have, but I think that Mr. Black would naturally discuss with us anything that affected our interests as a stockholder in an important way.

Suppose, for example, he was thinking of doing some financing in the form of convertible securities. They would have to be offered to the stockholders, and I think in that case we should expect him to consult with us about it. But we have never tried to lay down any pattern of [1650] the kind of things. We have to leave that to his, you might say, judgment, and perhaps to his courtesy to us as representatives of the North American Company.

Q. Now, you recall the reduction of the dividends on applicant's common stock which occurred in 1933? A. Yes.

Q. Do you recall Mr. Miller, one of the directors of the applicant, having been in New York City at that time, and getting in touch with Mr. Fogarty or yourself regarding that reduction, and joining with you in a request that the matter be reconsidered by the applicant's Board?

A. I think that did happen. We certainly tried to get them to reconsider it.

Q. Well, do you recall——

A. And while I didn't meet Mr. Miller, or discuss it with him in any way, I do believe that he

(Testimony of Herbert C. Freeman.)

felt they had acted with perhaps an insufficient representation at the meeting.

Q. Do you know of any other instance in which the representatives of North American Company and Mr. Miller have acted in regard to any affairs pertaining to the applicant?

A. No, I don't recall any other. I think that just happened because he was in New York at the time.

Q. Were you advised prior to the increase in the [1651] dividends in applicant's stock, which occurred in 1936, as to the proposed increase?

A. I don't recall specifically whether we were, but I rather think that we did have some intimation.

(Whereupon, a short recess was taken.)

After Recess

Q. Have you ever discussed the dividend policy of the applicant with Mr. Hockenbeamer?

A. No.

Q. How about with Mr. Black?

A. No, I do not recall any discussion with him.

Q. But you do believe you were advised as to the contemplated increase in the dividends in 1936.

A. I think we were, yes.

Q. And you do expect to be advised of any contemplated change in the present dividend rate of the applicant on the common stock before action thereon is taken by the Board?

(Testimony of Herbert C. Freeman.)

A. I would expect to be, unless the change were made without any warning in a Board meeting. That, of course, is something that nobody can control. If the directors in a meeting decide to take some action, then it is our fault for not being present at the meeting.

Q. In other words, you would expect Mr. Black to advise you of any recommendations which he expected to make [1652] which would change the dividend policy?

A. Yes, I think he would, so that we might, if we wanted to, be present and express our opinion.

Q. Has Mr. Black ever assured you that he would give such advance information as to his recommendations?

A. Not to my knowledge, he has not so expressed himself to me.

Q. Is it customary for Mr. Black to advise you prior to the declaration of all the dividends on the common stock as to what his recommendations will be to the Board?

A. He never has done so, because there has been only one change since he became president.

Q. And to the best of your knowledge, he did advise you as to that change?

A. I think he did, yes.

Q. But if Mr. Black intends to recommend the payment of what might be now considered the regular dividend on the common stock, that is eight

(Testimony of Herbert C. Freeman.)

percent, he does not give you advance notice of such a recommendation? A. No.

Q. Mr. Freeman, in connection with your work with the North American Company, do you have supervision over the preparation of registration statements in connection with the issuance of securities by the subsidiaries of the North American Company? [1653]

A. Not exactly supervision. Nearly all the registration statements come to me as soon as they are set up in proof form, and I go over them and make my comments. Other officers do the same. Perhaps, in some ways, I have in the past been one of the last people to be consulted on any changes, so that to that extent, I may be said to have had more or less supervision.

Q. Well, in connection with the registration statements filed by the applicant with the S. E. C. in connection with the issuance of securities by it, have you received from the applicant proofs of the registration statements of those issues?

A. I really don't remember whether we have. It is some time since they did any financing, and I cannot remember now whether I saw a proof or whether I just saw a final form as filed. I can say this, though, that we have really had nothing to do with the form or the composition of those registration statements. They have been handled entirely by the company, and what has been sent to us has been for our information, so that we might

(Testimony of Herbert C. Freeman.)

know what we were becoming liable for, as directors.

Q. You don't recall——

A. I don't recall any case in which any features of the registration statement has been discussed with us.

Q. And you don't recall ever having suggested any [1654] changes in the proofs of any registration statements, if you received such proofs?

A. I don't recall that.

Q. And no members of the staff of the North American Company assisted in the preparation of those registration statements? A. No.

Q. Do you participate in negotiations with the underwriters in connection with the financing of the subsidiaries of the North American Company?

A. Yes, quite frequently.

Q. That is part of your duties?

A. Yes, that is Mr. Fogarty's primary duty, but I personally participate in those discussions.

Q. And you, I believe, are Vice President of the Committee on——

A. No, I am a member of the Executive and Finance Committee.

Q. Executive and Finance Committee?

A. Yes. But, as I say, we work pretty much as a team, and if Mr. Fogarty wanted me to sit in on the negotiation, I would do so.

Q. Is this Executive and Finance Committee of the North American Company, Mr. Freeman, com-

(Testimony of Herbert C. Freeman.)

parable to the Executive Committee of most Corporations, or is it a sub or [1655] separate committee which functions in the organization? Which is more important in the title, Executive Committee or Finance Committee? I mean, do you have an Executive Committee distinct and separate from the Executive and Finance Committee?

A. No, the Executive and Finance Committee is substantially the Executive Committee. It is just a difference in name. It functions between meetings of the Board.

Q. And performs the duties usually performed by an Executive Committee in a corporate setup?

A. Yes, but there was a deliberate purpose in calling it Executive and Finance Committee. It was to indicate that it dealt with the financial problems of the company to a greater extent, perhaps, than most Executive Committees do.

Q. Would it be correct to say that in the North American organization that Mr. Fogarty or yourself were most active in carrying on negotiations with respect to the financing of the North American Company and its subsidiaries?

A. I think that would be a fair statement. Mr. Piske, of course, also participated in those discussions.

Q. He is the Treasurer—— A. At times.

Q. He is the Treasurer of the North American Company? [1656]

A. He is now the Treasurer, yes; and usually

(Testimony of Herbert C. Freeman.)

one of the chief executives of the subsidiary companies sit in with us, or perhaps in some cases, it would be more correct to say that we sit in with them. Frequently, of course, negotiations have to be carried on over a period of days or weeks, and in that case we will handle the direct contact with the bankers in New York, and consult with the executives of the subsidiaries over the telephone.

Q. But there is no one in the North American organization that is more active than yourself and Mr. Fogarty in that type of work? A. No.

Q. Who formulates the refinancing plans of the applicant, if you know?

A. The executives of the company—Mr. Black and his fellow officers.

Q. And did Mr. Black or Mr. Hockenbeamer ever confer with you regarding the formulating of such plans?

A. No, I would say not. They have advised us from time to time that they were planning so and so much financing, and indicated the form of it.

Q. Have you ever submitted to Mr. Black or any of the officers of the applicant a plan of re-financing, or initiated a re-financing carried out by the applicant? A. No. [1657]

Q. Have the representatives of any underwriting firm ever approached you in an effort to get the leadership of syndicates forming in connection with the financing of the applicant, or participate in such syndicates?

(Testimony of Herbert C. Freeman.)

A. I don't think seriously. No, I think there have been—I am not speaking of myself personally now, because nobody has approached me on that point; but whenever there was any word of financing being done, there were always people who would get in touch with everybody they possibly can, to try to secure some position in the financing. And I have no doubt that there have been firms that have approached one or another of us on that basis. Whether—I doubt whether that would be from the point of view of heading the syndicate, because, after all, that rests peculiarly with the management of the company itself.

Q. Do you know what response representatives of the North American Company have made as to any such inquiries or efforts on the part of representatives of various banking houses?

A. Any that I know about we have simply referred to the company.

Q. Are you acquainted with Mr. Stanley Russell? A. No.

Q. Do you know who he is? [1658]

A. Yes, I know who he is, but I have never met him.

Q. Do you know any representatives of Blyth & Company?

A. I have met Mr. Charles Blyth, and I have met Mr. George Leib. I don't know them intimately at all, but I have met them.

(Testimony of Herbert C. Freeman.)

Q. Do you know Mr. Mitchell, Mr. Charles Mitchell?

A. Oh, yes, I know Mr. Mitchell.

Q. Are those gentlemen that you have mentioned here Messrs. Blyth, Lieb, and Mitchell—close personal friends of yours, Mr. Freeman?

A. No.

Q. To what extent have you discussed applicant's financing with any of the representatives of Blyth & Company? A. Not at all.

Q. Mr. Freeman, I hand you Commission's Exhibit No. 42 which lists all of the issues of the applicant, and beginning with the period 1930, will you please relate everything that you now can recall that you had to do in connection with any of the issues of the applicant since that date?

A. I have not had anything to do with any of the issues.

Q. Well, have you carried on any conversations with Mr. Black or any representatives of the applicant relating [1659] to any of those issues?

A. Mr. Black, on one occasion—I think it was during Mr. Fogarty's absence—called me and told me of the arrangements he had made for the handling of one of the issues. I think it was this large issue in March, 1936. But it was from the point of view of advising me, rather than of discussing with me, as to whether he should or should not do any particular thing.

(Testimony of Herbert C. Freeman.)

Q. Did you ever discuss with Mr. Hockenbeamer as to who should have the leadership of applicant's financing after the National City Company went out of business, out of the investment banking business? A. No.

Q. In 1933? A. No.

Q. Did Mr. Hockenbeamer ever seek your advice as to the responsibility or capabilities of any of the investment banking firms in the early part of 1935 or the latter part of 1934?

A. Not to my knowledge. He didn't talk to me about it.

Q. And you never made any suggestions to him as to who should be considered as the syndicate manager of the 1935 issue, first 1935 issue?

A. No.

Q. Did you ever have any discussions in the latter [1660] part of 1934 or the early part of 1935 with Mr. Black or Mr. Fogarty regarding what underwriting firm might be desirable to head the applicant's business?

A. Not just from that point of view. We realized that in 1935 there was a new problem presented, because of the change that had taken place in the relationship of banks to underwriting groups, but any discussion we had was just purely by way of conjecture among ourselves as to which group would naturally head up the syndicate.

Q. Well, do you know whether or not any representative of the North American Company com-

(Testimony of Herbert C. Freeman.)

municated to Mr. Hockenbeamer the views of North American Company as to who might be a satisfactory firm to head the first piece of applicant's business in 1935?

A. No, I don't know that anybody did.

Q. Do you know who selected the firm of Lazard Freres & Company to head the first piece of business in 1935?

A. I have always understood it was Mr. Hockenbeamer.

Q. Did the North American representatives have any objections to Lazard Freres & Company heading up that business?

A. No, we had no objections. We weren't consulted about it.

Q. After you knew that Mr. Hockenbeamer, or some representatives of the applicant, had selected Lazard Freres [1661] to head this piece of business, did you, or to your knowledge any representative of the North American Company, express to Mr. Hockenbeamer a dissatisfaction over that selection?

A. No, not to my knowledge.

Q. Was there any understanding between North American representatives and Mr. Black at the time he became president of the applicant, as to who should head the next piece of applicant's financing?

A. No, there was no discussion.

Q. You will see from that exhibit, Mr. Freeman, that the first piece of financing by the applicant after Mr. Black became president was headed by

(Testimony of Herbert C. Freeman.)

Blyth & Company. Will you tell me all you know about Blyth & Company's selection as the head of that underwriting syndicate?

A. I think that selection was due to Mr. Black's feeling that they were the firm that should naturally head the syndicate for Pacific Gas & Electric financing.

Q. What do you mean by that—that that firm should naturally head the applicant's business?

A. I think because they were identified with former business of the company; they were looked upon as a California house; they were a good, strong house, with representation here in the East; they were in every way qualified to handle that financing. [1662]

Q. Before that selection was made by Mr. Black, did he confer with you, or any representatives of North American Company, to your knowledge, and seek your views as to whether or not Blyth & Company should be considered for this work?

A. Not to my knowledge. I might say that we knew from the time the first issue was made in 1935 that Mr. Black's preference would have been for Blyth & Company.

Q. So that you knew when he became president of the applicant that he would be more favorable to Blyth & Company having the leadership of the company than he was with respect to Lazard Freres & Company?

(Testimony of Herbert C. Freeman.)

A. Yes, I think it is fair to say that we knew that.

Q. You were in accord with his views on that matter?

A. Yes, in a general way, I think we were.

Q. And Mr. Black was acquainted with your preference in regard to the matter, that is the preference of North American Company?

A. Yes, I think he was. I think it is fair to say, though, that the other directors of P. G. & E. felt the same way as we did about it.

Q. Had you ever discussed the matter with any of the other directors?

A. No, we had never discussed it, but we had been informed that that was the case. [1663]

Q. Do you know anything about the activities of Blyth & Company during 1935 and the early part of 1936 to get the leadership of applicant's financing?

A. No, I have no knowledge of that.

Q. Have you ever discussed with Mr. Harrison Williams the question of syndicate manager for issues put out by the applicant in the past, or which might be issued in the future? A. No.

Q. Do you know anything about how Dillon, Read & Company, Kuhn, Loeb & Company, and Morgan, Stanley & Company got substantial participations in the large 1936 issue?

A. That was one of the things I remember Mr. Black spoke to me about at the time of the tele-

(Testimony of Herbert C. Freeman.)

phone conversation that I mentioned, and it was that this was a very large issue, a $90,000,000 issue, and it was Blyth & Company's idea, as I understand it, that there should be no possible risk of the issue not being a complete success, and in order to do that, they thought that it was extremely desirable to have the three powerful firms connected with the issue.

Q. So far as you know, then, the representatives of the North American Company did not suggest the participation of these firms initially?

A. No.

Q. Has Mr. Black ever conferred with you regarding [1664] the price at which applicant sell the securities which it had issued since he became president?

A. I wouldn't say he ever discussed it with me. He has talked to me as to the price which they were discussing with the bankers.

Q. And you gave them at that time the benefit of your best judgment as to the adequacy of that price, or the fairness of it?

A. Yes, I think, as a matter of fact, that on behalf of one. I only remember one conversation with Mr. Black that related to financing. I think that was this March 1936 issue.

Q. Have you had any correspondence with Mr. Black regarding the financings of the applicant?

A. No, I don't believe I ever have. I am sure I have not.

(Testimony of Herbert C. Freeman.)

Q. During the period that Mr. Black was associated with the North American Company, did his duties require, or bring him in touch with, financings of the various subsidiaries of the applicant, or were his duties largely related to operating as distinguished from financial matters?

A. Oh, he would have been in close contact with any financing done by the company.

Q. Was he considered a financial or operating man when he came to the North American Company in 1927? [1665]

A. He was primarily an operating man, but, after all, he had been with us in New York for several——

Q. I said in 1927, when he came to you?

A. Oh, in 1927, I would say that he was regarded primarily an operating man.

Q. Well, in your opinion, did his years with the North American Company serve to increase his knowledge concerning financing of utility companies? A. I would say unquestionably.

Q. So you think he knew more about financial matters from the standpoint of a utility company when he left North American than when he came there? A. I would say undoubtedly.

Q. Mr. Freeman, could you describe generally the difference between the contacts which the North American had with its subsidiaries and those which it has with the applicant?

(Testimony of Herbert C. Freeman.)

A. There is very vast difference. I mean, it is a difference in kind, not merely of degrees. We try to keep advised on all of the major matters affecting our subsidiaries, not merely as to things that have happened, but as to things which are being planned before they happen. We do try to keep in touch with their organizations to a sufficient extent to be informed on more or less operating details, and certainly with respect to any major project [1666] of construction. We try to help them to look ahead to their requirements. We expect to be consulted as to any changes in the higher executives of the companies, to some extent, and salaries, matters of that kind, proposed rate changes, proposed franchise situations, and even as to their finances. While we know what is being done in the way of financing by Pacific Gas & Electric Company, we take no part in it, but in the case of our subsidiaries, we very frequently initiate the ideas that eventually lead to financing. We prepare financial plans and advise them as to what we think is the best form of financing, the best time to do it. We frequently discuss those matters with bankers before any plans are set up by the subsidiaries themselves, then we turn over the plans to them if we originate them, or if they originate them, they come and discuss them with us, and then work is set in motion to set up the issue, discussions with bankers for final say. So that even as to the limited degree of control that we exercise over our sub-

(Testimony of Herbert C. Freeman.)

sidiaries and detailed operations, it is vastly greater than anything we have ever had in mind with regard to the Pacific Gas & Electric, where we literally are stockholders with director representation, and where, due to the element of time and distance, even we, as directors, cannot possibly keep in touch with the detailed matters of operation.

Q. Has there never been a time when the North American [1667] Company, through any of its departments, performed any services either with or without a charge for the applicant?

A. There has never been any time when we performed any services for them.

Q. Mr. Freeman, is the testimony which you have given both on your direct and cross examination, or, in that testimony, have you described as accurately as it was possible for you to do so, the contacts which have existed between North American Company and the applicant which are within your knowledge since 1930?

A. Yes, I have.

Q. Do you know of anything which you have not covered in such testimony which would further show the relationship between these two companies since the North American has acquired a substantial interest in the applicant's securities?

A. I think it has all been very fully covered.

Q. On direct examination I believe you testified that in your opinion the North American Company does not now, or has not in the past, either con-

(Testimony of Herbert C. Freeman.)

trolled or exercised a controlling influence over the policies and management of the Pacific Gas & Electric Company. On what facts, or what is the basis of such an opinion on your part?

A. It seems to me that the facts speak for themselves. There has been nobody in the North American organization [1668] who has attempted in any way to direct or control any activity of the Pacific Gas & Electric Company.

Q. Well, why does the North American Company deem it advisable, if such it does, to not exercise the same supervision over the affairs of the applicant as is exercised over the affairs of its subsidiaries?

A. In the first place, the Pacific Gas & Electric Company has always been regarded as peculiarly a California company, and our desire has been to see them have as strong and representative a local Board as they possibly could have. It would not be practicable to induce representative men to serve on a Board of that kind if they thought their actions were going to be subject in any way to the direction or veto of a company three thousand miles away. It would affect their public relations. It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management.

Q. Then, would you say that your failure to exercise control of the applicant, or controlling influence over its management and policies, was due

(Testimony of Herbert C. Freeman.)

entirely to a feeling on the part of the North American Company that such a control or controlling influence was not desirable, or not to the best interests of it?

A. I would say that it was not desirable from the [1669] viewpoint that it would not be to our best interests as stockholders. [1670]

Q. But if the time should come when you felt that it would be to the best interests of the North American Company, as a common stockholder of the applicant, to exercise such control or controlling influence over the applicant, then it would be expected that North American would exercise such influence?

A. Of course, that is quite a hypothetical question, but my feeling about that is that if that situation ever arose, it would be better for us to sell our interest than to try to exercise control. I think we would do more harm by stepping in and saying, "Now, this company isn't being properly managed. We are going to manage it"—I think the repercussions from that in the State of California would hurt our investment far more than if we allowed it to be known that we were going to sell.

Q. But you do feel that if you thought it desirable to exercise controlling interest, you would be in a position to do so?

A. I don't think we would, except as against—possibly as against some other foreign interest that might have got in there and obtained control. In

(Testimony of Herbert C. Freeman.)

other words, with this present Board of Directors, or any comparable Board, composed of local people, I just don't believe we could step in there and take control.

Q. Well, now, I think you testified that at the time [1671] the North American Company acquired its interest in the applicant, it gave some form of assurance that they would not interfere with the management policies of the applicant. At least, that was what your understanding was, although you had no direct conversations to that effect with Mr. Hockenbeamer. Do you feel that that assurance places the North American Company under any kind of a moral obligation not to interfere, or what do you feel are the limits of that assurance?

A. I would say that an assurance of that kind depends entirely upon the composition of the Board of Directors and the way they felt about it. If you can imagine a local California Board saying that they thought it would be advantageous for us to move in there—I am ignoring for the moment any question of authority that we would have to do it —I don't think that that assurance would be binding as against such a condition.

Q. In other words, if the North American people reached the conclusion that the management of the applicant were incompetent and inefficient, and needed some substantial changes, you would not feel that the assurance which was given in 1930

(Testimony of Herbert C. Freeman.)

would restrict you from taking an active part to correct the situation that was then existing?

A. No, I didn't say that. I wasn't thinking of a condition under which they became incompetent. I was thinking [1672] of a condition, which is purely hypothetical, that they would in a sense invite us to come in and become more of a factor. Now, I can't imagine that that would happen.

(Discussion off the record.)

A. (continuing) What I really mean is this: That if the management became incompetent, I don't think we could cure it by trying to get into the situation ourselves. The most we could possibly do *would* to consult with the other directors there and get them to agree to putting in a management that was competent; and if we were unable to do that, I am quite sure that our interests would be better served by getting out of the situation rather than trying to move in, because I don't believe a foreign interest, as we would be, could advantageously operate a company of the character of the P. G. & E.

Q. Well, just what restrictions do you feel that the representation which you said was made in 1930 to the applicant's then management places you under?

A. I think there is a moral obligation there that as long as that Board feels that they have the situation in hand, and they don't want us to increase our interest, we should not do it.

(Testimony of Herbert C. Freeman.)

Q. So that you wouldn't go in in absence of an invitation by the local directors?

A. Well, or with the knowledge and agreement of the local directors. [1673]

Q. Mr. Freeman, you are acquainted, are you not, with the changes which took place in the relationships, some of the relationships between the North American Company and some companies in which it had a substantial investment, along in 1935, when it became quite certain that there would be a Public Utility Holding Company Act?

A. You have reference to the handling of——

Q. Transfer and——

A. —transfer work, yes, and financial representation—that kind of thing.

Q. That sort of thing?

A. Yes, prior to that we had acted as transfer agent and paying agent——

Q. Well, I don't care for a detailed description, but, I mean, are you familiar with the changes which took place with respect to the relationship between the North American Company and some of the companies in which it had a substantial investment? A. Yes.

Q. Along in 1935? A. Yes.

Q. Now, will you please describe all of the changes, if any, which took place during that period with respect to the relationship between the applicant and the North American Company? [1674]

A. There were no changes at all.

(Testimony of Herbert C. Freeman.)

Q. Would you say that the relationship which exists today between the applicant and the North American Company is the same as that which has existed at all times since 1930?

A. Yes, I would say it is exactly the same.

Q. Why did not the same changes occur with respect to your relationship with the applicant as took place with respect to such companies as the Detroit Edison, for example?

A. Well, Detroit Edison Company was a company with which we had had relations for 30 years prior to that time; and during that time, on a purely competitive basis, we had acted as its financial agent in New York; I mean, in the sense of paying coupons, transferring bonds, things of that kind—and we charged them a fee for it, a fee as fiscal agents.

The only reason we changed that was that we felt that under the Holding Company Act, there might be some impropriety in our continuing to act in that relationship. Now, that relationship had never existed with Pacific Gas. At the time we acquired our interest there, they already had all their arrangements made, and there was no occasion for them to make any changes.

Q. Well, do you mean that during 1935 there were no relationships which existed between the applicant and the [1675] North American Company which the North American Company felt needed changing, in view of the passage of the Act?

(Testimony of Herbert C. Freeman.)

A. Exactly, yes.

Miss Calkin: I think that is all.

The Examiner: Mr. Phleger.

Redirect Examination

By Mr. Phleger:

Q. Mr. Freeman, you have testified on direct examination that North American Company did not control or exercise a dominating influence over the business or affairs of the Pacific Gas and Electric Company. On cross-examination you were asked hypothetical questions as to the future, and some of your answers are perhaps susceptible of being read as expressing a view on your part that if the North American Company saw fit in the future, and considered it to its interests to do so, it might at some time in the future control the P. G. & E., or exercise the dominating influence over its management and affairs.

Was that your purpose in answering those questions—to convey that impression?

A. No, I hadn't intended to convey the idea that we had any intention or desire, or that we could assume any hypothetical condition in which we would; but the questions didn't relate to any desire on our part. They related, rather, to the extent, for example, to which we were under [1676] perhaps a legal obligation not to do it.

Q. Well, you must realize that you are being examined by able and skillful counsel, and the mat-

(Testimony of Herbert C. Freeman.)

ter to which I have reference is, rather, power than intent. Do you believe that at any time in the future the North American Company could, if it desired, if it decided it wanted to, go in and either control Pacific Gas and Electric Company or exercise the dominating influence over its management and affairs?

A. Well, we should first have to see what the Securities & Exchange Commission thought about it.

Q. Well, aside from that.

A. Aside from that, I can't imagine any condition under which the North American Company, as at present constituted, would feel that it would serve any useful purpose to try to control Pacific Gas.

Q. Let us assume it felt that it would be a useful purpose. Could it do it?

A. I don't know. I doubt whether it could.

Q. Well, just explain to me how you could do it, and how you would go about doing it. You have two directors out of fifteen, and you have two million shares out of ten million. Now, will you just lay out a course of conduct under which you would control that company?

A. Oh, I—perhaps I misunderstood the question. [1677]

Q. I think you did, and that is what I am just trying to point out to you. The question is: Assuming, now—you have always been explaining how you didn't think it was to your interest to do it, and you couldn't conceive any circumstances under

(Testimony of Herbert C. Freeman.)

which it would be to your advantage, and so forth; but I would like to ask you: Do you think that at any time in the future you could either control the company or exercise a dominating influence over its management and affairs if you wanted to?

A. Not as matters now stand, no. I think the drift of the questions was towards whether we would attempt to secure control.

Q. I realize that that was what you thought the drift of them was, but that wasn't what they did say, so that you may correct the impression your answers might have created. I ask you now whether, if you wanted to in the future, either control or dominate the affairs of the Pacific Gas and Electric Company, you thought you could.

A. The only way I could see that we could possibly do it would be by acquiring upwards of 50 percent of the stock.

Q. And to do that, you would have to get the permission of the S. E. C., would you not?

A. Yes.

Q. And you would have to go out in the market and buy [1678] up the stock?

A. That is true.

Q. And is that the only circumstance under which you think you could acquire control of the company? A. I believe it is, yes.

Mr. Phleger: That is all.

The Examiner: Miss Calkin, have you any further?

(Testimony of Herbert C. Freeman.)

Recross Examination

By Miss Calkin:

Q. Do you own over 50 percent of the voting securities of all of your subsidiaries which are considered subsidiaries under the Act?

A. All of which are considered—oh, which are considered subsidiaries under the Act?

Q. Yes, I mean, do you have——

A. Well, we have some statutory subsidiaries which we don't regard as subsidiaries.

Q. No. I mean, do you own 50 percent of the voting securities of Cleveland Electric, Wisconsin properties, Washington Railway & Light, Union Electric?

A. Of Cleveland, Union, and Wisconsin, we own over 50 percent, and North American Light & Power, and those are the ones we treat as subsidiaries.

Q. But, I mean——

A. In the case of Washington, we did, until quite [1679] recently, own over 50 percent of the voting control.

Q. But, I mean, under the Act, you admit control of certain companies. I mean, by admitting control there are no applications for exemption pending of companies in which you own less than 50 percent of voting securities?

A. Well, we have only two such situations which we directly own. One is Washington and the other is Detroit.

(Testimony of Herbert C. Freeman.)

Q. But the Washington property is an admitted subsidiary, in so far as the Securities & Exchange Commission is concerned, of the North American Company? A. Yes.

Q. Of course, Detroit Edison is not?

A. There we own—I think it is 47 or 48 percent of the voting control, and some 80 percent-odd of the common stock. We don't treat it as a subsidiary.

Q. On the books of your company?

A. However, we couldn't deny that at this time we do effectively control that company. But that control comes from an actual legal control, where we owned over 50 percent, which has recently been reduced.

Q. Well, in your opinion, is an ownership of a majority of the voting securities of a company necessary to effectively control it?

A. That depends on the ownership of the rest of the stock. In the case of Washington, for example, the fact that [1680] we don't own 50 percent of the voting control is due to the fact that the preferred stock is voting, and that there is more preferred stock outstanding than there is common. The preferred stockholder is generally unwilling to exercise control. It is hard to get preferred stock to vote, as a whole.

Q. Well, from your experience, you could easily conceive of a situation in which the owner of much

(Testimony of Herbert C. Freeman.)

less than 50 percent of the voting securities of a company could control that company if the remainder of the voting securities were widely scattered, could you not, Mr. Freeman?

A. Well, not only widely scattered, but, let us say, inarticulate. Now, you can't say, of a company like Pacific Gas, where so large a proportion of its stock is owned in California, that you have an inarticulate common stock list.

Q. But the more widely scattered your stock, the more inarticulate your stockholders are apt to be; isn't that true?

A. Not necessarily. It depends where it is scattered. If it is scattered purely on a basis of financial investment, they may be inarticulate as long as the company is showing good results, but where you have a company that is regarded as a local company, and the great bulk of the stock is owned locally, that is, a very large percentage of it is owned [1681] locally, you are going to get a very quick reaction from your stockholders, I think, if they think anybody on the outside is trying to dominate their company.

Q. In other words, in reference to the applicant, it is your opinion that it would be necessary for the north American Company to own in excess of 50 per cent of its voting securities before it could not only control the company, but exercise controlling influence over it?

A. Substantially yes. Of course you might argue that if we owned 49 percent, the chances of anybody's being able to gather together the whole 51 percent against us were none too good. I do mean that in that company probably more than in any other company you would seem to have practically legal control before you could do anything that appeared to favor the controlling interest as against the rest of the stockholders. I am sure you would get a very strong reaction.

Q. Well, you are aware of the fact, are you not, that only about 48 percent of the voting securities of the applicant are owned by residents of California?

A. I didn't know the exact percentage. I knew it was a very substantial percentage.

Miss Calkin: I think that is all.

Mr. Phleger: That is all.

The Examiner: You may be excused, Mr. Freeman. [1682] Thank you very much.

(Witness excused.)

(Discussion off the record.)

The Examiner: Let the record show that by agreement of counsel, or without objection by counsel for the applicant, the Commission is offering and there will be received in evidence as Commission's Exhibit No. 141, the—what is that, a financial statement?

Miss Calkin: No, it is a listing application.

Mr. Phleger: A listing application headed, "Pacific Gas and Electric Company, Committee on Stock List, New York Stock Exchange"—an additional listing of 1,825,000 common shares, the listing application being accepted June 4, 1930.

The Examiner: Adopted by the Governing Committee.

(The document referred to was received in evidence and marked Commission's Exhibit 141.)

The Examiner: Any further evidence to be offered now by the applicant?

Mr. Phleger: No, the applicant submits its application.

The Examiner: For the Commission?

Miss Calkin: The Commission rests.

The Examiner: I think the record shows that at an earlier point in the proceedings you made a motion which was, at my suggestion, deferred until later, although reference was made to it again. Do you still feel you want to propose that [1683] motion as to an intermediate report or findings?

Mr. Phleger: Yes.

It is our desire, and we apply for and move that there be an Examiner's report in this case. It may be as a result of the subsequent developments that that request will be withdrawn, but as of the moment, we make that request.

I would also like a stipulation, which I understand is agreeable to counsel for the Commission,

that the times limited by the rules with respect to request for findings, filings of brief, and all other acts, shall not apply in this proceeding, but that applicant and counsel for the Commission, subject to the approval of the Commission, shall hereafter agree as to such times.

Miss Calkin: It is so stipulated.

The Examiner: As I previously indicated, Mr. Phleger, according to the rules, I shall have to refer that motion to the Commission and I do not think it is necessary that you file that motion in writing because, as long as I have to submit it, I will submit it to the Commission in writing and await their instructions, and I presume that some matters with respect to that will be taken up with them, pursuant to this stipulation that you have just made, so I do not know how soon I will hear from the Commission, but I will await its instructions with respect to the report. [1684]

If there is nothing further at this time, the hearing is closed.

(Whereupon, at 4:10 o'clock p.m., January 16, 1941, hearing in this matter was closed.)

[1685]

[Endorsed]: No. 9918. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Gas and Electric Company, a Corporation, Petitioner, vs. Securities and Exchange Commission, Respondent. Transcript of Record (in Six Volumes) (Vol-

ume I). Upon Petition to Review an Order of the Securities and Exchange Commission.

Filed October 24, 1941.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

POINTS UPON WHICH PETITIONER WILL RELY ON ITS PETITION FOR REVIEW HEREIN.

Petitioner herein hereby makes the following statement of points upon which it will rely upon its petition for review:

1. The Commission erred in failing to find that Petitioner is not controlled by The North American Company.

2. The Commission erred in failing to find that

the management and policies of Petitioner are not subject to a controlling influence by The North American Company.

3. The Commission erred in failing to find that the management and policies of Petitioner are not subject to a controlling influence by The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties, and liabilities imposed in the Public Utility Holding Company Act of 1935 (herein called the Act) upon subsidiary companies of holding companies.

4. The Findings and Opinion of the Commission do not justify its failure and refusal to make the findings specified in the foregoing subdivisions 1, 2 and 3.

5. The Commission erred in failing to find affirmatively that Petitioner is an independent company; that it is not controleld by The North American Company; and that its management and policies are free from the controlling influence of The North American Company.

6. The Commission erred in taking jurisdiction over Petitioner without any finding of facts on which such assertion of jurisdiction is based, and it therefore acted without due process of law and in contravention of the Fifth Amendment of the Constitution of the United States.

7. The Commission erred in taking jurisdiction over assets of Petitioner located, and business and

affairs of Petitioner conducted, wholly within the State of California, in contravention of the Tenth Amendment of the Constitution of the United States.

8. The Commission erred in its interpretation and application of the Act, and in its conclusions, and the order is based upon a mistake of law and is arbitrary and void in the following respects:

(a) The Commission construed the Act as imposing upon Petitioner the duty of demonstrating that it is not controlled by The North American Company, and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(b) The Commission ignored and failed to give weight and effect to uncontradicted evidence that Petitioner is not in fact controlled by The North American Company and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors

or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(c) It disregarded the word "controlling" in construing and applying clause (iii) of Section 2(a)(8) of the Act.

(d) It construed and applied the words "subject to a controlling influence" in said clause as meaning "susceptibility to domination".

(e) It held that the ability "to make its influence felt in a substantial and affirmative manner" by The North American Company amounted to a controlling influence under the Act.

(f) It held that the fact that The North American Company might make a "formidable opponent" in a proxy fight, and that "there is a strong possibility that North American could prevail", (as found by the Commission, but which as hereinafter set forth is contrary to the uncontradicted evidence) thus making it a "potent tool in influencing the management to give heed to North American's wishes" amounted to a controlling influence within the meaning of the Act.

(g) It held in substance that a mere possibility of succeeding in a future proxy fight constituted a controlling influence within the meaning of the Act.

(h) It held that a future possibility of control

under speculative future circumstances constituted a controlling influence within the meaning of the Act.

(i) It decided that an intrastate public utility company may be found to be subject to a "controlling influence" by another company within the meaning of said Act, without proof that the influence presently exists or is sufficiently effective to be controlling.

(j) It construed and applied the Act as bringing an intrastate utility company within the regulatory provisions of the Act, as a subsidiary of a holding company, if it is hypothetically susceptible to future influence by the holding company, without proof that such influence is presently existing, or is strong enough, if exerted, to be controlling.

(k) It disregarded competent, relevant and material evidence which is uncontradicted and substantial and is adequate proof of the fact, that Petitioner is neither controlled by, nor subject to a controlling influence by, The North American Company so as to make it necessary or appropriate that it be regulated under the Act, and concluded that it may instead, deny the application by a series of conjectures unsupported by substantial evidence.

(l) The Commission construed and applied the Act as giving it uncontrolled discretion in determining whether it was necessary or appropriate in the public interest or for the protection of investors or consumers, that Petitioner be subject to the obligations, duties and liabilities imposed by the Act

upon subsidiary companies of holding companies; and disregarded conclusive proof not only that none of the evils enumerated in the Act existed in the past, or exist at present, but also that any power or influence of The North American Company is not sufficient to bring about any of such evils.

(m) The Commission failed to apply or give effect to the provisions of the Act that where it is shown that a controlling influence does not presently exist, but may come into existence at some future date, the application for an order declaring that Petitioner is not a subsidiary within the meaning of the Act, shall not be denied, but shall be granted conditionally on terms as authorized in Section 2(a)(8) of the Act.

(n) In holding that Petitioner "has not demonstrated that its management and affairs are not subject to the controlling influence of North American", the Commission held Petitioner to an impossible standard of proof of a negative fact and required such a degree of proof as produces absolute certainty.

(o) The Commission has construed the phrase "subject to a controlling influence" in clause (iii) of Section 2(a)(8) of the Act in such a manner as to render it so uncertain and vague as to be incapable of judicial enforcement.

(p) The Commission construed and applied the Act as giving it unlimited discretion in determining what degree of influence over Petitioner's management and policies shown to be possessed by North

American constitutes a "controlling influence" which is such "as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies. As so construed the Act is void for uncertainty and constitutes an unconstitutional delegation of legislative power. The proper construction of the Act is that any influence shown to be possessed by a holding company over the affairs of an intrastate public utility, must presently exist and must be sufficiently extensive and powerful to bring about the evils that the Act is designed to guard against and which are enumerated in it.

(q) The evidence shows conclusively that the evils which the Act was designed to prevent have not existed and do not at this time exist with respect to Petitioner, and that The North American Company never has possessed, and does not now possess sufficient influence to bring about such evils in the future, and the Trial Examiner so found. The Commission disregarded these findings, and the uncontradicted evidence which supports them, and erroneously concluded that Petitioner should be made subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies, because Petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American so as to make it necessary or appropriate in

the public interest or for the protection of investors and consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies.

(r) The Commission construed the Act as providing that any company 10 percentum or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote, by a holding company, is a subsidiary company of such holding company; and that Petitioner under the Act was a subsidiary company of The North American Company merely by virtue of the ownership by The North American Company of more than 10 percentum of the outstanding voting securities of Petitioner.

(s) The Commission failed to construe the Act as requiring it to declare that Petitioner was not a subsidiary company of The North American Company upon a showing by it that it was not controlled, directly or indirectly by The North American Company, or that its management or policies were not subject to a controlling influence, directly or indirectly, by The North American Company; the Commission construed such Act as making it optional or discretionary with it to make such declaration.

(t) The Commission failed to interpret and apply the Act as required by Section 1 (c) thereof, which declares that the policy of said Act, in accordance with which policy all of its provisions shall be interpreted, is to meet the problems and eliminate

the evils enumerated in Section 1 of said Act connected with public utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce.

(u) The Commission construed the Act as permitting it to deny Petitioner an order declaring it not to be a subsidiary of The North American Company notwithstanding the evidence clearly showed that The North American Company did not possess any control, power or influence sufficient to bring about any of the problems or evils enumerated in Section 1 of said Act, or which the Act was designed to correct.

(v) The Commission construed the Act as requiring Petitioner to sustain the burden of demonstrating that its management and policies are not subject to the controlling influence of The North American Company in order to obtain its order declaring it not to be a subsidiary company of The North American Company; and in that connection weighed the presumption contained in Section 2(a)(8) of such Act (that, absent a showing to the contrary, any company 10 percentum or more of the outstanding voting securities of which are directly or indirectly owned, controlled or held with power to vote by such holding company, is a subsidiary company of such holding company) against probative evidence introduced by Petitioner; and failed to weigh all of the evidence presented, and to render its findings and order in accordance therewith.

(w) The Commission construed the Act as per-

mitting it to treat and give effect to the presumption contained in Section 2(a)(8) as evidence in the case, and to weigh the same against other probative evidence.

(x) The Commission construed and disposed of Petitioner's application for an order that it be declared not to be a subsidiary company of The North American Company, as an application for exemption from the provisions of the Act as a subsidiary company of The North American Company.

(y) The Commission construed the Act as presumptively requiring that Petitioner be regulated as a subsidiary of The North American Company.

(z) The Commission construed the Act as authorizing it to deny Petitioner's application for an order declaring it not to be a subsidiary of The North American Company unless Petitioner demonstrated that it was entitled to be exempted from the general requirements of regulation as a subsidiary of a registered holding company.

9. The Commission erred in finding without substantial evidence in support thereof, and contrary to substantial and uncontradicted evidence to the contrary, the following as facts:

(a) That "North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner".

(b) That "North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North Amer-

ican could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes".

(c) That "it is wholly untrue to characterize North American's relationship to PG&E as merely that of a stockholder holding an investment interest".

(d) That "applicant regularly sends to North American a variety of detailed weekly and monthly reports".

(e) That "applicant has not sustained the burden of proving that it is not 'subject to the controlling influence' of North American within the meaning of Section 2(a)(8)."

(f) That "applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers, that the applicant be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies."

(g) That the reason for The North American Company's non-interference with the management or policies of Petitioner has been "North American's complete satisfaction with the local management and that its failure to interfere has been purposeful."

(h) That "there is evidence to justify a finding that even at the present time North American exerts

a real influence in the affairs of PG&E, even though this influence is exerted in a negative way".

(i) That "so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors".

By reason thereof the Commission acted arbitrarily and in violation of its statutory duty, and its order is void.

10. The Commission erred in failing to adopt the Report and Findings of Fact of the Trial Examiner recommending that Petitioner's application be granted.

11. The Commission, in making and entering the Order herein complained of, acted arbitrarily in that said Order is contrary to the evidence, which shows that Petitioner is not controlled by The North American Company and that its management and policies are not subject to a controlling influence by said company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies, and said Order is without evidence to support it. By reason of the foregoing errors the Commission denied any hearing to Petitioner upon its said application in contravention of the Fifth Amendment of the Constitution of the United States.

12. If the Act is to be construed as it was construed and applied by the Commission as heretofore set forth, the Act would deprive Petitioner of its liberty and property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.

Dated: October 31, 1941.

HERMAN PHLEGER,
WM. B. BOSLEY,
ROBERT H. GERDES,
Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

[Endorsed]: Filed Nov. 1, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court and Cause.]

DESIGNATION BY PETITIONER, PACIFIC GAS AND ELECTRIC COMPANY, OF THE PORTIONS OF THE RECORD, PROCEEDINGS AND EVIDENCE TO BE CONTAINED IN THE RECORD

Pacific Gas and Electric Company, Petitioner herein, designates the following as the portions of the record, proceedings and evidence to be contained in the record herein:

All of the transcript of the record certified by the Secretary of the Commission and filed in this Court on October 24, 1941, except that the following por-

tions of said record constituting duplications of material elsewhere appearing therein may be omitted in printing:

1. Commission's Exhibit No. 1—Notice of an order of the Commission for hearing dated September 4, 1940.

2. Commission's Exhibit No. 2—Order of the Commission changing the time and place of hearing and designating different trial examiner dated October 10, 1940.

3. Applicant's Exhibit No. 1—Application of Pacific Gas and Electric Company, et al.

4. Applicant's Exhibit No. 2—Amended and supplemental application of Pacific Gas and Electric Company, et al.

5. Trial Examiner's findings of fact and report.

6. Findings and opinion and order of the Commission.

Dated: San Francisco, California, October 31, 1941.

HERMAN PHLEGER,
WM. B. BOSLEY,
ROBERT H. GERDES,
Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

[Endorsed]: Filed Nov. 1, 1941. Paul P. O'Brien, Clerk.

No. 9918

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

PACIFIC GAS AND ELECTRIC COMPANY,
a corporation,

Appellant,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Appellee.

Upon Petition To Review An Order of The Securities and Exchange Commission

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PROCEEDINGS HAD IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

In the United States Circuit Court of Appeals
For the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

v.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

PETITION TO REVIEW AND MODIFY OR SET ASIDE AN ORDER OF THE SECURITIES AND EXCHANGE COMMISSION, AND FOR A STAY PENDING SUCH REVIEW

To the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit:

Pacific Gas and Electric Company petitions the Court to Review and Modify or Set Aside so much of the Order of the Securities and Exchange Commission made September 10, 1941, as denies the application of the Petitioner for an order under Section 2(a) (8) of the Public Utility Holding Company Act of 1935, declaring it not to be a subsidiary of The North American Company, and for a Stay Pending Such Review, and in that behalf alleges:

1. Petitioner is a corporation organized and existing under the laws of California, having its principal place of business in San Francisco, California, in the Ninth Judicial Circuit of the United

States. Petitioner is a public utility engaged in the business of producing, generating, purchasing, transmitting, distributing, and selling electric energy and gas to the public. All of Petitioner's public utility business is conducted, and all of its properties used or useful in conducting that business, are located within the State of California.

2. The Securities and Exchange Commission (hereinafter called the "Commission") was established under Section 4, Title I of the Securities Exchange Act of 1934, approved June 6, 1934, and is charged with the administration of the Public Utility Holding Company Act of 1935, approved August 26, 1935, (49 Stat. 803, 15 U.S.C.A. Sec. 79 et seq., hereinafter called the "Act").

3. Upon information and belief The North American Company now is, and for a long time past has been, a registered holding company under the Act. At all times since June 12, 1930, it has continued to own more than 10 per centum of the outstanding voting securities of Petitioner, to wit, approximately 17.71% of Petitioner's outstanding shares of stock.

4. Petitioner seeks the review of an Order of the Commission dated September 10, 1941, entered in a proceeding before it upon application of petitioner under Section 2(a) (8) of the Act for an order declaring that Petitioner is not a subsidiary company of The North American Company, in so far as said Order denies said application. A copy of said Order is hereto attached and marked Exhibit A. A copy of the Findings and Opinion of

the Commission issued in connection with said Order is hereto attached and marked Exhibit B.

5. Jurisdiction of this Court is invoked under Section 24(a) of the Act, which provides that any party aggrieved by an order issued by the Commission under said Act may obtain a review of such order in—*inter alia,* the Circuit Court of Appeals of the United States within any circuit wherein such person has his principal place of business.

6. The Act provides for registration of holding companies and for extensive regulatory control by the Commission of registered holding companies and their subsidiary companies; it includes within its definition of a subsidiary company, any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned by a holding company, but provides that (15 U.S.C.A. Sec. 79b (a) (8)):

> "The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A), if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons), either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a con-

trolling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice, and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii) and (iii) are satisfied during the period for which such order is ef-

fective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term 'applicant' means only the company in respect of which the order is to be entered."

The obligations, duties and liabilities imposed in the Act upon subsidiaries of registered holding companies are onerous and extensive and the penalties for violation thereof are severe.

7. On November 29, 1935, Petitioner in good faith filed with the Commission an application for an order declaring that it is not a subsidiary company of The North American Company.

On September 4, 1940, the Commission directed a hearing upon such application, and on October 10, 1940, directed that such hearing commence at San Francisco, California, on November 12, 1940. Such

hearing was commenced at San Francisco on November 12, 1940, and continued there, and later in New York City, New York, being concluded on January 16, 1941.

Petitioner duly requested that the Trial Examiner make a report and findings of fact. The Trial Examiner on April 22, 1941, filed his Report and Findings of Fact with the Commission (a copy of which is hereto attached and marked Exhibit C), recommending that Petitioner's application be granted. In said report and findings of fact the Examiner recommended that, considering all facts of record, the Commission should find:

> "That the North American Company does not have the power to control the Pacific Gas and Electric Company;
>
> That the Pacific Gas and Electric Company has never been and is not now controlled, directly or indirectly, by the North American Company;
>
> That the management and policies of the Pacific Gas and Electric Company are not subject to the controlling influence, directly or indirectly, of the North American Company, wherefore it is not necessary or appropriate in the public interest and for the protection of investors or consumers, that the Pacific Gas and Electric Company be subject to obligations, duties and liabilities imposed by The Public Utility Holding Company Act of 1935." (Exhibit C, finding 181).

Counsel for the Commission duly filed exceptions to said report and findings of fact; Petitioner and counsel for the Commission filed briefs, and the matter was argued before three of the Commissioners on July 21, 1941.

On September 15, 1941, Petitioner received by registered mail a copy of the Order of the Commission of September 10, 1941, together with copies of the "Findings and Opinion of the Commission" in said matter, also dated September 10, 1941.

8. At the hearing before the Trial Examiner, Petitioner introduced sworn testimony and evidence in support of its application, and in proof of the facts required to be found by the Commission as a basis for the order sought. The taking of testimony before said Trial Examiner required twelve days, ten in San Francisco, California, and two in New York City, New York. Nineteen witnesses, including all of the principal officers and all of the Directors of Petitioner, appeared and testified under oath, and were extensively cross-examined by counsel for the Commission. Petitioner introduced in evidence 53 exhibits. The Commission introduced in evidence 141 exhibits, which included all written instruments considered by counsel for the Commission to be material to the inquiry and which had been found in an examination by the Commission of the files of Petitioner and The North American Company. The transcript of testimony includes 1685 pages. Three of the witnesses were produced at the request of counsel for the Commission.

At said hearing the Railroad Commission of the State of California appeared at the invitation of said Commission and filed a statement, which statement included the following:

> "Our object in presenting these observations, as stated at the outset, has been merely to summarize the authority exercised by this state regulatory Commission. They are not presented either to support or controvert the facts alleged in the application herein of Pacific Gas and Electric Company praying for an order of your Honorable Commission declaring it not to be a subsidiary of North American Company. Yet, as also stated in the beginning, we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations." (Exhibit C, finding 170)

In its briefs and argument, Petitioner specified the findings of fact and conclusions of law to which

it believed it was entitled by the evidence and by the proper construction of the Act.

The objections to the Order of the Commission hereinafter set forth, and the points hereinafter specified upon which Petitioner intends to rely, were all duly urged before the Commission.

In its application, Petitioner, in accordance with the rules of the Commission, reserved and refused to waive any constitutional or legal rights and protested that said Act if and to the extent that its provisions may be applicable to Petitioner, is repugnant to the Constitution of the United States, and that Petitioner is not subject to any of the provisions of said Act, nor to any rule or regulation adopted by the Commission under its authority.

9. In its Findings and Opinion (Exhibit B) the Commission found that all of Petitioner's public utility properties are located in California; that Petitioner does not purchase or sell any gas or electricity outside of California or at the state line; that Petitioner, and all of its subsidiary companies are predominantly intrastate in character and carry on their business in California, the state in which each of them is organized; and that Petitioner is predominantly a public utility company whose operations as such do not extend beyond the State of California. The Commission further found that Petitioner was not an intermediary company through which control of another company is exercised; and that the issues before it under Section 2(a) (8) of the Act were whether Petitioner had shown (a) that it is not controlled, directly or in-

directly, by The North American Company by any means or device whatsoever, and (b) that its management or policies are not subject to a controlling influence, directly or indirectly, by The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies.

The Commission further found "There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point at issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation, and in this respect we cannot agree with the conclusions reached by the trial examiner."

It further stated "We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E. But we also think that it is clear that the reason for this non-interference has been North American's complete satisfaction with the local management and that its failure to interfere has been purposeful."

The Commission also held "But our decision herein is based primarily on our finding that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner."

Following its finding that The North American Company has the power to make its influence felt, and following a recital of certain matters wherein The North American Company, by reason of its large stockholding, might exert influence with respect to Petitioner's activities, the Commission declared:

> "The only question remaining is whether North American's influence in applicant's affairs is such 'as to make it necessary or appropriate in the public interest or for the protection of investors or consumers' that applicant be subject to the obligations, duties, and liabilities imposed by the Act on subsidiary companies of holding companies. Applicant is a company with stated assets of almost $800,000,000 serving in excess of 1,500,000 customers; its securities are listed and traded on national securities exchanges and are owned by investors throughout the country."

The Commission did not find that any of the evils recited in Section 1 of the Act as reasons justifying its enactment, exist in the present case.

The Commission concluded its Findings and Opinion with the following statement:

> "On the basis of the foregoing, we hold that applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or

consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

We desire to emphasize that our holding in this respect is not to be taken to mean that any stigma is cast upon applicant or that we think that applicant is not properly regarded as a California corporation. Nor do we mean to indicate that the influence of North American necessarily is or will be improperly exercised. The only question which we have decided is that, in the circumstance of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company."

10. Petitioner alleges that the Order to be reviewed hereunder is invalid and void and should be set aside in so far as it denies Petitioner's application, for the reasons that:

a. The Commission erred in failing to find that Petitioner is not controlled by The North American Company.

b. The Commission erred in failing to find that the management and policies of Petitioner are not subject to a controlling influence by The North American Company.

c. The Commission erred in failing to find that

the management and policies of Petitioner are not subject to a controlling influence by The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties, and liabilities imposed in the Act upon subsidiary companies of holding companies.

d. The Findings and Opinion of the Commission do not justify its failure and refusal to make the findings specified in the foregoing subdivisions (a), (b) and (c).

e. The Commission erred in failing to find affirmatively that Petitioner is an independent company; that it is not controlled by The North American Company; and that its management and policies are free from the controlling influence of The North American Company.

f. The Commission erred in taking jurisdiction over Petitioner without any finding of facts on which such assertion of jurisdiction is based, and it therefore acted without due process of law and in contravention of the Fifth Amendment of the Constitution of the United States.

g. The Commission erred in taking jurisdiction over assets of Petitioner located, and business and affairs of Petitioner conducted, wholly within the State of California, in contravention of the Tenth Amendment of the Constitution of the United States.

h. The Commission erred in its interpretation

and application of the Act, and in its conclusions, in the following respects:

(1) The Commission construed the Act as imposing upon Petitioner the duty of demonstrating that it is not controlled by The North American Company, and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(2) The Commission ignored and failed to give weight and effect to uncontradicted evidence that Petitioner is not in fact controlled by The North American Company and that its management and policies are not subject to the controlling influence, directly or indirectly, of The North American Company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that Petitioner be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies of holding companies, and refused to consider or pass upon the evidence produced in said proceeding before the Commission in accordance with the provisions of the Act.

(3) It disregarded the word "controlling" in

construing and applying clause (iii) of Section 2(a) (8) of the Act.

(4) It construed and applied the words "subject to a controlling influence" in said clause as meaning "susceptibility to domination".

(5) It held that the ability "to make its influence felt in a substantial and affirmative manner" by The North American Company amounted to a controlling influence under the Act.

(6) It held that the fact that The North American Company might make a "formidable opponent" in a proxy fight, and that "there is a strong possibility that North American could prevail", (as found by the Commission, but which as hereinafter set forth is contrary to the uncontradicted evidence) thus making it a "potent tool in influencing the management to give heed to North American's wishes" amounted to a controlling influence within the meaning of the Act.

(7) It held in substance that a mere possibility of succeeding in a future proxy fight constituted a controlling influence within the meaning of the Act.

(8) It held that a future possibility of control under speculative future circumstances constituted a controlling influence within the meaning of the Act.

(9) It decided that an intrastate public utility company may be found to be subject to a "controlling influence" by another company within the meaning of said Act, without proof that the influence presently exists or is sufficiently effective to be controlling.

(10) It construed and applied the Act as bringing an intrastate utility company within the regulatory provisions of the Act, as a subsidiary of a holding company, if it is hypothetically susceptible to future influence by the holding company, without proof that such influence is presently existing, or is strong enough, if exerted, to be controlling.

(11) It disregarded competent, relevant and material evidence which is uncontradicted and substantial and is adequate proof of the fact, that Petitioner is neither controlled by, nor subject to a controlling influence by, The North American Company so as to make it necessary or appropriate that it be regulated under the Act, and concluded that it may instead, deny the application by a series of conjectures unsupported by substantial evidence.

(12) The Commission construed and applied the Act as giving it uncontrolled discretion in determining whether it was necessary or appropriate in the public interest or for the protection of investors or consumers, that Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies; and disregarded conclusive proof not only that none of the evils enumerated in the Act existed in the past, or exist at present, but also that any power or influence of The North American Company is not sufficient to bring about any of such evils.

(13) The Commission failed to apply or give effect to the provisions of the Act that where it is shown that a controlling influence does not presently exist, but may come into existence at some future

date, the application for an order declaring that Petitioner is not a subsidiary within the meaning of the Act, shall not be denied, but shall be granted conditionally on terms as authorized in Section 2(a) (8) of the Act.

(14) In holding that Petitioner "has not demonstrated that its management and affairs are not subject to the controlling influence of North American", the Commission held Petitioner to an impossible standard of proof of a negative fact and required such a degree of proof as produces absolute certainty.

(15) The Commission has construed the phrase "subject to a controlling influence" in clause (iii) of Section 2(a) (8) of the Act in such a manner as to render it so uncertain and vague as to be incapable of judicial enforcement.

(16) The Commission construed and applied the Act as giving it unlimited discretion in determining what degree of influence over Petitioner's management and policies shown to be possessed by North American constitutes a "controlling influence" which is such "as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies. As so construed the Act is void for uncertainty and constitutes an unconstitutional delegation of legislative power. The proper construction of the Act is that any influence shown to be possessed by a holding company over the affairs of an intrastate

public utility, must presently exist and must be sufficiently extensive and powerful to bring about the evils that the Act is designed to guard against and which are enumerated in it.

(17) The evidence shows conclusively that the evils which the Act was designed to prevent have not existed and do not at this time exist with respect to Petitioned, and that The North American Company never has possessed, and does not now possess sufficient influence to bring about such evils in the future. The Trial Examiner found as follows:

> "171. Present and prospective investors in Applicant's securities can obtain the information necessary to appraise the financial condition and earning power of applicant.
>
> 172. Applicant now keeps and ever since 1913 has kept its accounts in accordance with the uniform system of accounts for gas and electric corporations prescribed from time to time by the California Railroad Commission.
>
> 173. All reports filed pursuant to the uniform system of accounts are open to the public.
>
> 174. Applicant issues a comprehensive annual report containing a balance sheet and profit and loss statement, a copy of which is sent to each stockholder.
>
> 175. Applicant's common stock is listed on the New York Stock Exchange, and its common and preferred stocks are listed on the San Francisco and Los Angeles Stock Exchanges, and in that connection it files with such Exchanges and the Securities and Exchange Com-

mission all reports required by such Exchanges and by the Securities Exchange Act.

176. It has issued bonds on several occassions since the enactment of the Securities Act in 1933, and in that connection has filed the registration statements required by that Act." (Exhibit C)

The Commission disregarded these findings, and the uncontradicted evidence which supports them, and erroneously concluded that Petitioner should be made subject to the obligations, duties and liabilities imposed by the Act on subsidiary companies of holding companies, because Petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American so as to make it necessary or appropriate in the public interest or for the protection of investors and consumers" that Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies.

i The Commission erred in finding without substantial evidence in support thereof, and contrary to substantial and uncontradicted evidence to the contrary, the following as facts:

(1) That "North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner".

(2) That "North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North Amer-

ican could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes".

(3) That "it is wholly untrue to characterize North American's relationship to PG&E as merely that of a stockholder holding an investment interest."

(4) That "applicant regularly sends to North American a variety of detailed weekly and monthly reports".

(5) That "applicant has not sustained the burden of proving that it is not 'subject to the controlling influence' of North American within the meaning of Section 2(a) (8)."

(6) That "applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest, or for the protection of investors or consumers, that the applicant be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies."

(7) That the reason for The North American Company's non-interference with the management or policies of Petitioner has been "North American's complete satisfaction with the local management and that its failure to interfere has been purposeful."

(8) That "there is evidence to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a negative way".

(9) That "so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors".

j. The Commission erred in failing to adopt the Report and Findings of Fact of the Trial Examiner recommending that Petitioner's application be granted, and more particularly the following findings and recommendations:

> "That the North American Company does not have the power to control the Pacific Gas and Electric Company;
>
> That the Pacific Gas and Electric Company has never been and is not now controlled, directly or indirectly, by the North American Company;
>
> That the management and policies of the Pacific Gas and Electric Company are not subject to the controlling influence, directly or indirectly, of the North American Company, wherefore it is not necessary or appropriate in the public interest and for the protection of investors or consumers, that the Pacific Gas and Electric Company be subject to obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935." (Exhibit C, Finding 181)

k. The Commission, in making and entering the Order herein complained of, acted arbitrarily in that

said Order is contrary to the evidence, which shows that Petitioner is not controlled by The North American Company and that its management and policies are not subject to a controlling influence by said company so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the Petitioner be subject to the obligations, duties and liabilities imposed by the Act upon subsidiary companies of holding companies, and said Order is without evidence to support it.

11. Petitioner is aggrieved by said Order because by reason thereof it is made immediately subject to the Act and to the requirements and restrictions thereof, and to the jurisdiction of the Commission thereunder, and amenable to all rules, regulations and orders of the Commission relating to subsidiaries of registered holding companies or otherwise made applicable to Petitioner. Among other things, Petitioner is thus prohibited, without leave of the Commission (subject to some narrow exceptions and to rules or regulations prescribed by the Commission) from financing its requirements in normal ways; from issuing or selling any of its securities; from exercising any privilege or right to alter the priorities, preferences, voting power or other rights of the holders of its outstanding securities; from acquiring any securities or utility assets or any other interest in any business; from acquiring, retiring or redeeming any of its securities; from paying any dividends in contravention of requirements of the Commission at the time in force; and from

having as directors persons with financial connections not permitted by the rules and regulations of the Commission at the time in force. In addition, Petitioner is required to furnish to the Commission such periodic and special reports and information as the Commission may prescribe, including special certifications by independent public accountants; to submit to such summary investigations and searches and seizure of its books, correspondence, and other papers and records by the Commission or by any holder of its securities as the Commission, in its discretion, may make or permit; and to make and preserve such accounts, cost accounting procedures, correspondence, memoranda, papers, books and other records as the Commission may require from time to time, and is forbidden to keep any other than those so prescribed or approved, or to keep those authorized in any other manner than that so authorized.

Petitioner and its personnel are, by said Order, made subject to civil proceedings to enforce compliance with mandatory rules, regulations or orders of the Commission, and to enjoin any violations of any rule, regulation or order of the Commission, and are also subject to criminal proceedings penalizing violations of the Act or such rules by heavy fines and by imprisonment of any individuals concerned.

12. Petitioner further alleges that the said Order is invalid and void by reason of the fact that the Constitution of the United States confers upon the Congress no power or authority to regulate the

assets of Petitioner located, and the business and affairs of Petitioner conducted, wholly within the State of California, by reason of ownership of its stock by other parties or otherwise, but on the contrary such power and authority are reserved to the respective states or to the people by the Tenth Amendment of said Constitution; and that said Order is arbitrary, capricious and not supported by any substantial evidence or by any facts found by the Commission or by any other facts, and is without warrant of law, and deprives Petitioner and the holders of its securities of liberty and property without due process of law in contravention of the Fifth Amendment of the Constitution of the United States.

13. No previous application for the relief sought in this petition has been made to any other court or judge.

Wherefore, your Petitioner respectfully prays that this Honorable Court review the Order issued September 10, 1941 by the Commission against your Petitioner, modify said Order and set aside that part of the said Order which denies the application of Petitioner, stay the said part of said Order and the effective date thereof until the hearing and determination of this petition, and grant such other and further relief as to the Court may seem just and equitable.

Dated: September 18, 1941.

PACIFIC GAS AND ELECTRIC COMPANY,
By JAMES B. BLACK
President
HERMAN PHLEGER
WM. B. BOSLEY
ROBERT H. GERDES
Attorneys for Petitioner.

BROBECK, PHLEGER & HARRISON,
Of Counsel.

State of California,
City and County of San Francisco—ss.

James B. Black, being first duly sworn, deposes and says:

That he is an officer, to-wit, President, of Pacific Gas and Electric Company, a corporation, the plaintiff named in the foregoing Petition; that he has read the said Petition and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters, that he believes it to be true.

JAMES B. BLACK

Subscribed and sworn to before me this .... day of September, 1941.

FRANK PANTER
Notary Public
in and for the City and County of San Francisco, State of California.

My commission expires November 15, 1947.

[Endorsed]: Petition to review, etc., Filed September 18, 1941, Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

Excerpt from Proceedings of Friday, September 19, 1941.

Before: Wilbur and Mathews, Circuit Judges,
St. Sure, District Judge.

[Title of Cause.]

ORDER FOR STAY PENDING REVIEW

Upon oral argument of Mr. Herman Phleger, counsel for petitioner, and upon reading and filing the verified petition of Pacific Gas and Electric Company herein to review and modify or set aside so much of an Order of the Securities and Exchange Commission dated September 10, 1941, as denies the application of said petitioner under Section 2 (a) (8) of the Public Utility Holding Company Act of 1935 to be declared not to be a subsidiary of The North American Company, a registered holding

company under said Act, which said petition prays that pending such review, said portion of said order and the operation thereof be stayed, and the affidavit of James B. Black filed in support of said application for a stay; and it appearing to the Court that by Section 24 of the Public Utility Holding Company Act of 1935 said petitioner is entitled to a review of said order, and that the Court may stay the operation of said order pending review thereof; and it further appearing that unless such stay be granted petitioner would immediately be subject to the obligations, duties and liabilities imposed by said Act, even though said order after review be modified or set aside, and that great and irreparable loss and injury would be suffered by said petitioner unless said order and the operation thereof be stayed pending such review, and good cause appearing therefor,

It Is Hereby Ordered that pending a hearing and determination of the petition filed herein by Pacific Gas and Electric Company seeking to review and modify or set aside so much of an order of the Securities and Exchange Commission dated September 10, 1941, as denies the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of The North American Company, or until further order of this Court, said portion of said order and the operation thereof be and the same are hereby stayed and suspended.

It Is Further Ordered that plaintiff, within one day from this date, forward by registered mail to

the Secretary of the Securities and Exchange Commission, Washington, D. C., a certified copy hereof.

This Court reserves the right to make such other or further order in the premises as to it may seem just and equitable.

Done at San Francisco, California, this 19th day of September, 1941.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, December 2, 1941.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered petition to review herein argued by Mr. Herman Phleger, counsel for petitioner, and by Mr. Christopher M. Jenks, counsel for respondent, and submitted to the court for consideration and decision.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Tuesday, April 14, 1942.

Before: Garrecht, Haney and Stephens,
Circuit Judges.

[Title of Cause.]

ORDER DIRECTING FILING OF OPINION AND DISSENTING OPINION, AND FILING AND RECORDING OF DECREE

By direction of the Court, Ordered that the typewritten opinion and dissenting opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the majority opinion rendered.

[Title of Circuit Court of Appeals and Cause.]

Upon Petition to Review an Order
of the Securities and Exchange Commission

OPINION AND DISSENTING OPINION

Before: Garrecht, Haney and Stephens,
Circuit Judges.

Haney, Circuit Judge.

The present cause arises on a petition to review and modify, or set aside an order of the Securities and Exchange Commission.

Pacific Gas and Electric Company, petitioner,

hereafter called the company, is a California corporation, and was organized in 1905. On March 23, 1912, the Public Utilities Act of California became effective, and since that date, the company could issue securities only with the approval of the Railroad Commission of California. All its securities now outstanding, have been authorized by the Railroad Commission except 15% of its common stock which was issued prior to March 23, 1912. All the company's public utility properties are located in, and its business is conducted in, the State of California.

The Public Utility Holding Company Act of 1935, hereafter called the act, became effective on August 26, 1935. Section 2(a) (8) of the act defines a "subsidiary company" as meaning:

> "(A) any company 10 per centum or more of the outsanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company * * * unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and
>
> "(B) any person the management or policies of which the Commission after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate in the public interest

or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies.

"The Commission upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediate persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company

of such specified holding company until the Commission has acted upon such application, Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application."

Section 79f makes it unlawful for a subsidiary company of a registered holding company to issue or sell any of its securities except with the approval of the Commission.

On November 29, 1935, the company filed an application with the Commission for an order declaring that it was not a subsidiary company of The North American Company, a registered holding company under the act which has held 17.71% of the company's voting stock since June 12, 1930. On September 4, 1940, the Commission directed a hearing upon such application, and on October 10, 1940, directed that such hearing commence, and it did commence, on November 12, 1940. The hearing concluded on January 16, 1941. The trial examiner on April 22, 1941, filed his report recommending that the company's petition be granted.

On July 1, 1941, the California Railroad Commission authorized the company to issue and sell 400,000 shares of its 5% First Preferred Stock, and it commenced to sell them after July 8, 1941.

On September 10, 1941, the Commission entered an order denying the company's application. At that time the company had sold 199,433 shares of the stock above mentioned. On September 18, 1941,

the company filed a petition in this court to Review and Modify or Set Aside the order of the commission, and for a stay pending such review. On the same date it filed an affidavit in support of the stay. On the following day, this court made an ex parte order staying and suspending the order and the "operation" thereof, reciting "that by Section 24 of the Public Utility Holding Company Act of 1935 said petitioner is entitled to a review of said order, and that the Court may stay the operation of said order pending review thereof".

On October 17, 1941, the Commission moved to vacate so much of the order of September 19, 1941, as provided for the stay and suspension, on four grounds: (1) the Commission's order is not susceptible of being stayed, because of the act, the company is a subsidiary company, and to stay the order is to have no effect other than to leave the company in the status in which the statute places it, i.e., a subsidiary company; (2) if effective to remove the company from its status as a subsidiary, the stay does not preserve the status quo because when the Commission acted, the company was a subsidiary company under the act, and a stay could not change it; (3) no great or irreparable loss or injury will be suffered by the company, if the stay is vacated, but if not, the national public interest and the interests of investors and consumers may be adversely affected; and (4) this court was without jurisdiction to stay the Commission's order because the jurisdiction to stay is for the purpose of preserving the

statu quo, but here, statu quo, i.e., as a subsidiary company, is preserved without the stay.

Upon the hearing of respondent's motion the cause was set for hearing on the merits, and the motion taken under advisement. In view of our decision on the merits, the motion has become moot.

The Commission held that the Trial Examiner had reached his recommendation because he had misconstrued the statute. The Commission construed §2(a) (8) of the act as meaning (1) that the applicant had the burden of proving that its management and policies are not subject to the controlling influence of North American; and (2) that "controlling influence" meant something less in the form of influence on the management or policies of a company than "control" of such company, that "control" includes the power to control, and "subject to a controlling influence" includes susceptibility to domination. It found that petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American * * * " The two rules of law mentioned above and the finding are challenged here.

As to the finding, petitioner contends, as the Board found "that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of P. G. & E." If petitioner's contention regarding the second rule of law above mentioned is correct, then reversal follows. However, if the Commission's view on the second rule of law is correct, then the

question arises as to whether there is any substantial evidence to support the finding.

Section 2(a) (8) of the act provides that the Commission shall declare that an applicant is not a subsidiary company, if it finds three facts: (1) that the applicant is not controlled directly or indirectly by a subsidiary company; (2) that the application is not the medium of control of another company by a holding company; and (3) that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * * so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. Since the statute requires findings of all three facts, in order to exempt a subsidiary as such, and since the third fact was not found by the Commission, the company is not entitled to exemption if the Commission's action regarding the third fact is sustained here.

The company contends that the language of the statute describing the third fact means "actual and existing control", rather than "susceptibility to control" as the Commission held, and since the Commission found that the evidence affirmatively showed a lack of actual and existing control, an exemption order should have been granted. The company quotes a portion of a committee report, and a part of Senator Wheeler's argument in the debates on the act. While the report sheds no light on the pres-

ent question, the portion of the argument mentioned definitely supports the company's view. We think such argument must be disregarded because contrary to the plain meaning of the act. Penna. R. R. Co. v. International Coal Co., 230 U.S. 184, 198-199. If the company's argument were adopted, then the first and third facts enumerated in the statute would be identical, and the third would therefore be surplusage. In view of the rule, that a legislative body is presumed to have used no superfluous words in a statute (Platt v. Union Pac. R. Co., 99 U.S. 48, 58), and the rule that "effect shall be given to every clause and part of a statute" (Ginsberg & Sons v. Popkin, 285 U.S. 204, 208) we think the construction of the statute by the Commission which gives effect to the entire statute is correct and must be sustained.

We are thus brought to the questions regarding the findings and the evidence. The Commission found that the company had not "demonstrated" a lack of susceptibility to control by North American. The company argues that the Commission thus saddled it with a burden of proof to a clear and convincing degree. The Commission argues that the company has the burden of proving the lack of susceptibility to control. Dispute between the parties exists with respect to the question as to whether the statute creates a rebuttable presumption that the company is a "subsidiary company" or whether the company is "prima facie" such a subsidiary.

The words "burden of proof" are used in two senses: (1) the duty to prove a charge by a degree

of proof such as a preponderance of the evidence; and (2) the duty to go forward with the evidence. Department of Water and Power v. Anderson, 9 Cir., 95 F(2d) 582, 583. In the first sense, "burden of proof" has no application to an administrative proceeding such as this. The statute does not specify any degree of proof required for any particular finding. The statute in question permits an application to be granted without hearing, but requires "notice and opportunity for hearing" if the application is denied or otherwise disposed of.

The statute does not even specify the party who shall have the duty of opening and closing the hearing. If such a hearing is held, it is only commonsense which requires the company to present its evidence, since it seeks a particular declaration. When the evidence is all in, the Commission considers the whole body of evidence, both pro and con, and finds what the ultimate facts are unrestrained by any rule regarding burden of proof, as used in the first sense. The sole restraining rule is that the fact found must be supported by substantial evidence, as is provided in §24(a) of the act, and if such fact is so supported, it is conclusive, whether it is supported by what someone other than the Commission thinks is a *preponderance* of the evidence or not.

Since the company is, by the terms of the act, a "subsidiary" company and can be relieved of that status only by an order of the Commission, and since such an order may be made only when the Com-

mission finds three facts, in a broad sense, it is natural to say that the company has the "burden of proof". However, when those words are used, neither of the technical senses, mentioned above, is intended. What is meant is that the company must present substantial evidence which convinces the Commission as to the three facts mentioned. We do not understand that anything different was meant in Securities and Exchange Com'n v. Sunbeam Gold M. Co., 9 Cir., 95 F(2d) 699, 702 and Detroit Edison Co. v. Securities Exchange Commission, 6 Cir., 119 F(2d) 730, 739.

The company contends that the finding of the Commission that the company "has not demonstrated that its management and policies are not subject to the controlling influence of North American" is not sustained by substantial evidence. The Commission relied on facts and made inferences to support its finding, as follows:

(a) North American owns 17.71% of the voting stock in petitioner. The second largest stockholder holds 1.72% of the voting stock. The rest of the stock is owned by corporations and individuals, scattered widely. Of the total voting stock 47.9% is held by non-residents. The Commission said:

> " * * * It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need

not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract be offset by the voting power which the local management could attract. It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes."

(b) North American's holdings have represented from 25% to 30% of the total votes cast at stockholders' meetings from 1931-1940. The Board said:

"* * * First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 25 to 30% of the votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum at all but two stockholders' meetings since it became applicant's largest stockholder; if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually 1/3 of applicant's common stock gives North American an effective veto power over any corporate

action requiring the consent of 2/3 of each class of stock—e.g., mergers and consolidations."

(c) Petitioner was organized in 1905 and now represents the consolidation of over 400 separate companies. It formerly purchased power from Great Western Power Company, which was organized in 1906. During most of the latter's existence, 90% of its revenues came from territory in competition with petitioner. Several unsuccessful attempts were made by petitioner to acquire the properties of Great Western between 1911 and 1925. Petitioner's present president is one Black, formerly an employee of Great Western. North American acquired control of Great Western in 1925, and in 1927, Black went to New York as vice president of North American—his principal duties at that time being to keep in touch with and assist Great Western and its subsidiaries.

In 1930, following negotiations begun in the previous year between Black and petitioner's then president, resulted in the acquisition by petitioner of the securities held by North American in Great Western and its subsidiaries. It was orally agreed that North American would not interfere with petitioner's management, that North American would be entitled to three members on petitioner's board of directors and one member on its executive committee. Black became a member of petitioner's board of directors as North American's representative.

Regarding these facts, the Commission said:

"It is wholly untrue to characterize North

American's relationship to P. G. & E. as merely that of a stockholder holding an investment interest. It now has two of its representatives on P. G. & E.'s board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the 'right' to such representation on applicant's board of directors and executive committee is, we think, of material significance. We find some significance, too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American; no such reports are sent to any other stockholder."

(d) Regarding the facts mentioned under (c), the Commission said:

"Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to P. G. & E. and as a result of which North Amer-

ican acquired its interest in P. G. & E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North American's interest. It is also significant that since Black became president of P. G. & E., no effort has been made to North American to have representation in the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of P. G. & E."

The facts, as thus stated, are not disputed. It is contended that the inferences drawn are contrary to the evidence. Such evidence was, of necessity, opinion evidence, because the facts inferred by the Commission were events which *might* happen, not what actually happened. In other words, the evidence relied on consisted of predictions that specified events *would not* occur, and did not consist of facts that such events *could not* happen. Manifestly, the Commission was not bound to accept the predictions as facts. As said in Labor Board v. Link-Belt Co., 311 U.S. 584, 597: "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts * * * The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and cir-

cumstantial evidence, and the weight and credibility of testimony". The rules quoted are applicable here.

Regarding the inferences made, the only question which we may consider is one of law, that is, were the inferences made reasonable? We think a reasonable man could reach the conclusion the Commission reached, and therefore the finding must be sustained.

The company also contends that the Commission did not consider other evidence which tended to show that North American had not attempted to dominate the company in the past. However, as quoted above, the Commission found specifically in accordance with such evidence. In view of what we regard as the proper construction of the words in the statute, "subject to a controlling influence", a finding for the company is not compelled by the fact that North American had not dominated the company in the past. Congress may prevent an evil from occurring, and need not wait till the damage is done before acting. Compare: Edison Co. v. Labor Board, 305 U.S. 197, 222. We think the construction of the statute approved here, carries out what we think Congress regarded as a preventive measure.

After finding that petitioner had failed to sustain its burden of showing that it was not subject to the controlling influence of North American, the Commission held that it was necessary or appropriate in the public interest or for the protection of investors or consumers, for petitioner to be subject to

the act. It stated in this connection that petitioner "is a company with stated assets of almost $800,000,000 serving in excess of 1,500,000 customers; its securities are listed and traded on national security exchanges and are owned by investors throughout the country". This finding arises by reason of §2(a) (8) of the act quoted above.

It is obvious that what is "necessary or appropriate in the public interest" is a question for the Commission to decide. Section 1(b) of the act enumerates a number of evils existing between holding companies and their subsidiaries. Section 1(c) provides in part:

> " * * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted to meet the problems and eliminate the evils as enumerated in this section * * * "

The company contends that this quoted provision is the standard by which the Commission is to be guided in determining what is "necessary or appropriate in the public interest" and that there is no showing of the existence of present evils, or of "such a controlling influence as would enable the holding company to bring about the evils enumerated in the Act".

We think it is unnecessary to decide this question, because of the construction of §2(a) (8). The words "so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obli-

gations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies", which we will refer to as the necessity clause, are such that the meaning of the entire sentence is not clear. We think there are three possible constructions of the entire sentence.

The narrowest construction of the sentence arises when the necessity clause is construed as modifying all three of the conditions mentioned in (i), (ii) and (iii), that is, e.g., that the control mentioned in (i) must be of a kind which makes it necessary or appropriate for the applicant to be held to be subject to the act. The Commission, in In the Matter of Wisconsin Valley Improvement Company, ... S.E.C. ..., found that the applicant was subject to the controlling influence of holding companies, but that because of "the character of applicant's business and the nature and extent of statutory and state commission regulation" it was not necessary or appropriate to make the act applicable to the applicant. That decision cannot be said to be unreasonable. It seems as reasonable to say that there might be actual control under (i) and yet the same factors would prevent the control from being exercised.

A second, and more liberal construction, insofar as it gives the Commission broader powers, arises when the necessity clause is considered as modifying only the condition mentioned in (iii). In other words, if there is control, specified in (i) or applicant is the intermediary through which such control is exercised, then the application should be denied, re-

gardless of whether such control makes it necessary or appropriate that the applicant be held to be subject to the act, and that it is only when the applicant is subject to a controlling influence, that there must be necessity or appropriateness in the public interest for applicant to be subject to the act. Considered superficially from the standpoint of sentence structure the second construction seems to be correct. However, even though there is no control under (i) it may be that such control cannot be exercised, or the control may be regarding a thing which could not possibly harm anyone. In either event, it seems illogical to say that the necessity clause modifies the controlling influence under (iii) but not the control under (i).

A third construction, and the one which gives to the Commission the broadest powers, arises when the necessity clause is not considered as a modifying clause at all, but as a fourth condition. As thus construed, before the application could be granted it would be necessary for the Commission to find that there was no control under (i), that applicant was not an intermediary through which such control might be exercised under (ii), that applicant was not subject to a controlling influence under (iii), and that it was not necessary or appropriate in the public interest to make the act applicable to applicant. If the contrary of any of the four conditions thus enumerated were found by the Commission, then the application would have to be denied. In other words, if the Commission found control under (i), or that applicant was the medium of control

under (ii), or that applicant was subject to a controlling influence under (iii), the application would have to be denied regardless of whether there was necessity or appropriateness under the necessity clause; on the other hand, if the Commission found that none of those three conditions were present, it could still deny the application on the ground that there was a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause.

We believe the latter construction is correct. Congress thought that the ownership by one corporation of 10% or more of the voting securities of another sufficient to declare the latter corporation to be a subsidiary, regardless of any other factor. It became a subsidiary not because of "control", or because it was the medium of control, or because it was subject to a "controlling influence", but because of the ownership of at least 10% of its stock. Congress recognized that harm might result to the public when there was such ownership, regardless of whether any of the three factors were present. It did not make as a condition to regulation any of these three factors. It is unreasonable to say that Congress intended to exempt from regulation when those three conditions only were not present. It seems apparent that harm might result to the public when none of such factors was present—that is the harm might spring from other factors. Such factors would be covered by the fourth condition, because of its generality.

This view is not contrary to the result of the Commission's holding above mentioned. It is inconsistent to say that A is subject to the controlling influence of B, when B is prevented from exercising it. In such event, A is not subject to a controlling influence because B cannot in fact exercise it.

The remaining portion of §2(a) (8) of the act speaks of the "conditions specified in clause (i), (ii) and (iii)". It does not say that there are only three conditions, but makes it clear that the conditions referred to are those "regarding the affiliations or intercorporate relationships". The fourth condition relates to the conditions between the subsidiary and the public.

As thus construed, the application was properly denied regardless of whether the finding under the necessity clause was sustained by substantial evidence or not.

The company suggests that some constitutional questions are involved, but it does not appear that such questions were presented to the Commission, and therefore we cannot consider them. See §24(a).

The petition to review is denied.

Garrecht, Circuit Judge, dissenting:

It appears that North American Company (hereinafter called "North American") owns, controls, and holds with power to vote 17.71% of petitioner's outstanding voting securities. Therefore, by statutory definition petitioner is a subsidiary of North American. Following the provisions set forth in the Act, Pacific Gas and Electric Company sought by appropriate petition to bring itself within the ex-

emption provided in the Act by alleging and offering to establish that (1) it is not controlled, directly or indirectly, by North American; (2) it is not an intermediary company through which control of another company is exercised; and (3) its management or policies are not subject to such a controlling influence, directly or indirectly, by North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers, that it be subject to obligations, duties, and liabilities imposed in the Act upon subsidiary companies.

The Commission issued notice of, and ordered, a hearing on petitioner's application. The hearing was had before a trial examiner. Although there was no real dispute as to the facts as set forth in the trial examiner's report, both counsel for petitioner and counsel for the Commission filed with the trial examiner separate requests for specific findings.

The report and findings of fact made by the trial examiner found and concluded that petitioner was entitled to the order which it sought. Thereupon counsel for the Commission filed exceptions to the report, and the matter was presented to the Commission upon brief and oral argument, and thereafter the Commission made findings, rendered an opinion, and entered its order denying petitioner's application.

Although by the terms of the statute Pacific Gas and Electric Company is an affiliate of North American, because it does hold more than ten percent of petitioner's stock, nevertheless if the evidence shows

that it is not controlled and that its management and policies are not subject to a controlling influence, directly or indirectly, by such holding company, it is entitled to an order of the Commission declaring the company not to be a subsidiary.

While the Commission concedes that the evidence shows that there is no control of petitioner by North American, the Commission maintains that it may still deny petitioner's application upon the assumption or supposition that merely ownership of 17.71% of the stock of petitioner by North American renders it subject to the controlling influence of such holding company despite the facts that there never has been any exercise of control or any effort in that direction and in the face of the evidence of the officers of North American that it holds the stock as an investment only and that there is no intention to exercise any control over petitioner and the further evidence of the officers and management of petitioner that they would not permit such control. It is also an admitted fact that petitioner's utility properties are all located, and its business is conducted, in the state of California. In this regard the Commission said: "On the basis of the record before us, we find that applicant and all of its subsidiary companies are predominantly intrastate in character and carry on their business in California, the State in which each of them is organized, and that applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California. * * * "

Petitioner is subject to the public utilities act of

said state and can issue securities only with the approval of the California Railroad Commission. This state commission by its representatives appeared at the hearing and presented a statement, which was received by the Commission, showing the manner and extent of its regulation of appellant, and in this document the California Railroad Commission stated that it was "aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company".

The Question of Control

Referring to the question of control as indicated by stock ownership, the court in Electric Bond & Share Co. v. Sec. & Exch. Com., 2 Cir., 92 F2d 580, 592, said:

> " * * * Congress elected the element of stock ownership, a factor most usually indicative of control, as prima facie evidence of control. The burden of proof, which is cast upon the utility company to prove otherwise, is not onerous. Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's finding be not supported by substantial evidence. * * * "

That case was subsequently appealed to the Supreme Court of the United States under the same title, 303 US 419. In the latter case the Department of Justice, for the Securities and Exchange Commis-

sion, filed an able and carefully prepared brief, discussing various sections of the Act. Upon the subject of stock control, because of the clearness of the reasoning and aptness of application to the present discussion, we quote from that brief the following (Br. for Resp., p. 6 of Apx. A):

> "A holding company, by express definition * * * is a company which *actually controls* operating companies, and not a company which merely has an investment in operating companies. Conversely, a subsidiary company, by express definition * * * is a company *actually controlled* by the holding company, and not simply a company in which the holding company has a substantial interest. Ten percent voting stock ownership creates a presumption of control in order to facilitate administration of the Act and to prevent ready evasion. That presumption, however, can readily be rebutted by either the putative holding company or the putative subsidiary company (Section 2(a) (7) and (8)) upon a showing that the company does not in fact exercise control. * * * No true investment company—i.e., a company which does not control the operating companies in which it invests—is in any manner affected by the act."

The following quotation is also from that brief (Br. for Resp., pp. 197-198):

> " * * * a company may readily prove if such be the fact that it does not possess control. Such burden of proof is not onerous because every

company has completely within its own organization full knowledge and control of all the facts and evidence * * * . Judicial review is provided to guard against any arbitrary action on the part of the Commission, and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (Section 24(a)). * * * "

With these declarations of the court and from the Commission in mind let us have a look at the testimony as found in the record and which was not contradicted.

The present board of directors consists of five directors who are officers and full-time employees of petitioner, eight directors who are prominent San Francisco business men, and two directors, Fogarty and Freeman, who are admittedly representatives of North American. Neither of these two North American representatives is a member of the executive committee.

All directors and principal officers, with the exception of the two directors who are officers of North American, are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern business or any corporation whose business is not principally conducted in California. During the entire period of petitioner's existence the members of the board of directors, with few ex-

ceptions, have been residents of San Francisco and vicinity, and have and do own and represent substantial stock interests in petitioner, and the fathers of four directors (directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon, and W. W. Crocker) were active in the affairs of predecessor companies. All of the directors, with the exception of directors Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood.

The directors, other than those who are active executives of the Company, and excepting directors Fogarty and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are chairmen of the boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities, and several are officers or trustees of educational or charitable institutions.

Each of petitioner's local directors to whom the question was propounded, namely, Messrs Miller, McKee, Crocker, Chickering, Livermore, Coghlan, Palmer, Nichols, McIntosh, Wishon, and Black, testified that it was his opinion that North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting.

Mr. Black testified that he would oppose any attempt by North American to control or influence the management or policies of the petitioner with "every resource at my command" and that he was

sure they would not be successful in a proxy fight because——

> "This company has a rather unique position in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 percent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.
>
> "Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the side of the company in any such fight."

Director Fogarty, the representative of North American on the board, testified that the management or policies of petitioner were neither directly or indirectly subject to a controlling influence by North American. Nor had that company ever at-

tempted to influence or control the management. He also said that as a practical matter it would not be possible. Mr. Freeman, the other representative, corroborated this view. Mr. Fogarty never attended a directors' meeting. This is also true of Mr. Freeman, who has never been in California.

The testimony of all of these witnesses is not contradicted.

It is probably worth remarking in this connection that North American has never solicited proxies; in fact, its officers or representatives have never voted its own stock, its proxies having been sent to other stockholders. If there existed any apprehension that North American might seek proxy control, the Commission has the power to prevent North American from soliciting any proxy.

To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose. Thus, the selection of James B. Black as president of appellant upon the unexpected death of Mr. Hockenbeamer, who had been president for many years, is pointed to as unmistakable proof of the evil influence exerted by North American, because at the time of Black's appointment he was the vice-president of North American.

It must be admitted that Black probably was as well qualified for the position as anyone anywhere; his career is altogether a notable one. His personal, professional, and administrative achievements are detailed at some length in the record, from which we summarize briefly: He came with his parents to

California at the age of twelve and has lived in San Francisco and vicinity ever since, with the exception of the short period when he resided in New York and served as vice-president of North American. He was educated in the schools of Oakland and San Francisco and at the University of California, from which he graduated in 1912 in engineering. After graduation he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western operating in San Francisco. About 1915, the properties of City Electric Company were taken over by Great Western, and Mr. Black successively engaged in sales, sales engineering, and administrative work in its San Francisco division. Later he became division manager, assistant general agent and general sales manager, and acting general manager, and in 1922 was made vice-president, general manager and a director of that company. After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February, 1927, when he went to New York at the invitation of North American as one of its vice-presidents.

His selection as president of Pacific Gas and Electric Company was entirely the result of the action of the California directors of that company, many of whom were acquainted with Black's capabilities. The fact that he was a Californian, that he was familiar with some of the properties of the company, and had wide experience were deemed qualifications, and his selection met with the unanimous approval of the board of directors. No suggestion of Mr.

Black's election was made by anyone in North American; his selection was not anticipated by the officers of that company, to whom it was a surprise. There is no evidence in the record indicating that North American played any part in the choice of Black as president of petitioner, other than to consent when the California directors asked permission to offer the position to him. When Black accepted the position he assured the California directors that he would sever all connections with North American. He has never sought or received the advice, approval, or recommendations of North American or its officers on any dividend rate, salary, refinancing, or any other pending matter. There is no difference between the information received by North American nor in the other relations with petitioner since Black became president than existing before that time.

Not only did the Commission disregard the uncontradicted evidence substantiating that there was no "control" or "controlling influence", it also disregarded a specific and important instance revealed by the evidence which very persuasively negatived such control. At one of the meetings of the board of directors of Pacific Gas and Electric, at which the question of declaring a dividend was up for consideration, it was voted that the dividend for that year be declared at the rate of six percent instead of the usual eight percent. The representatives of North American requested the board to reconsider this action, but it did not accede to the request.

Notwithstanding the uncontroverted evidence to the contrary, the Commission went off into the realm of speculation as to what might happen if North American should undertake to engage in a proxy fight with appellant's existing management for control, and it determined that the mere fact that there might be a strong possibility (based likewise on conjecture) that North American could prevail was itself proof of "susceptibility" to a controlling influence.

This opinion is much too long, but we must at least mention that there are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to "events which might happen" but "not what actually happened". The majority opinion in approving these methods of the Commission quotes an excerpt from Labor Board v. Link-Belt Co., 311 US 584, 597, as follows: "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts. * * * The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and circumstantial evidence, and the weight of credibility of testimony". But here there is no conflicting evidence to appraise, and as to weight and credibility of testimony it must be noted that the witnesses who testified contrary to the findings were outstanding men of affairs in California, and they were not contra-

dicted or impeached, and no reason appears in the record why they should be discredited.

According to the Commission petitioner was required to "demonstrate" non-control or influence by North American. The Act does not require any such mathematical extreme which excludes possibility of error, 23 CJ 9. It is sufficient if such showing is supported by substantial competent evidence which is not contradicted. Due process requires that the competent evidence adduced be fairly considered by the Commission on its merits. As was said by Justice Brandeis in speaking for the court in the Chicago Junction Case, 264 US 258, 265, "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action." In Morgan v. United States, 298 US 468, 480, Chief Justice Hughes said:

> " * * * The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. * * * "

Moreover, this court is not called upon to determine the credibility of witnesses or to teach a conclusion upon substantially conflicting facts. Indeed, no such question is presented here, since the Commission has said in its opinion that——

> "There is almost no dispute as to the facts in this case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner",

who found that Pacific Gas is not in fact controlled by, or subject to the controlling influence of, North American.

The Commission principally relies upon the case of Detroit Edison Co. v. Sec. & Exch. Com., 6 Cir., 119 F2d 730. It is submitted that the facts in that case are so different from the one before us that it cannot be considered an authority to support the action of the Commission here. In the Detroit Edison case, by agreement with two existing companies, a syndicate organized by North American acquired their stock and organized the Detroit Edison Company. Its officers and directors were all designated by North American. On behalf of its syndicate North American then offered all of the stock of the corporation and agreed to finance and furnish other assistance to the new company on certain terms. By the deal the syndicate acquired three million dollars of Edison's first mortgage bonds and fifty thousand

shares of its stock. The Edison then began operations. Thereupon the syndicate was dissolved, and North American retained more than 10 percent of petitioner's outstanding voting securities. The record shows that North American dominated the board of directors through the years, and at the time of the hearing a majority of the directors still had affiliations with North American. There were other intercompany relationships too extended to detail here, but which are referred to in the opinion and which had been discontinued not long before the hearing. From these facts it was concluded that in the light of Edison's origin and the unbroken continuity of North American's officers, directors, and designees on its board, and its absolute domination for many years by the parent company, it was not entitled to an order granting exemption from the statute. In summing up the situation the court said:

> "The fact that the North American Company had abandoned some of the characteristics of 'controlling influence' over the petitioner at the time of the hearing, did not require the Commission to disregard prior interrelated activities. There is no showing that its latent power to resume such control has been extinguished. The relationship is such that they may enter into similar activities in the immediate future. * * *
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> * * * * * * *
>
> " * * * Giving due weight to the past transactions of petitioner with the North American and the continuing opportunity for the resump-

tion of such activities and the extent of the petitioner's business and the widely scattered ownership of its stock, the Commission committed no error in denying petitioner exemption from the present Act." (119 F2d at pp. 739-740.)

All the evidence in the case before us shows a complete absence of such relationships and of any control throughout the period since North American became an owner of certain stock of Pacific Gas and Electric Company because of the transfer to it of certain utility properties that it had theretofore owned.

The Commission admits that the record does not reveal any past attempt by North American to interfere with its management or policies. It is likewise conceded that there is no evidence of actual control, nor, as has been shown, is there any substantial evidence from which any legally sound inference can be drawn that there ever was any effort whatsoever by North American to subject appellant to any controlling influence. Nor is there any testimony in the record from which any fair inference can be drawn that petitioner was subject to the controlling influence of North American.

From the discussion in Congress at the time the Act was under consideration and as well from the fair and ordinary meaning of the language, the phrase "subject to a controlling influence" does not mean, as the Commission found and the majority opinion determined, that appellant was required to

"demonstrate" that its management and policies were not "susceptible to control" by North American. "Subject to a controlling influence" is not the equivalent of "*susceptible* to a controlling influence". "Susceptible" and "subject" are not interchangeable or synonymous terms. The word "susceptible" connotes an especial liability to mental or emotional impressions. Advisedly that expression was not used in the statute. But the word "subject" is used, and here it occurs in relation with "control", and in that sense it can be correctly defined as meaning "under rule, authority, or domination". Thus, "subject to a controlling influence", as stated in the statute, is not the same thing as "susceptibility" to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to express some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute the Commission is in a position to act at once if ever the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the facts showed a lack of any actual and existing control or controlling influence.

It is also clear that the vague, artificial tests here employed are not sanctioned by the Act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence.

The facts presented to the Commission and all

reasonable inferences, deductions, and conclusions to be drawn therefrom, considered in their entirety and in relation to one another, negative the findings of the Commission. The inferences which are suggested as supporting the order of the Commission are based on mere suspicion. In Labor Board v. Columbian Co., 306 US 292, 299-300, Mr. Justice Stone said:

> "* * * But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. * * * Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' * * * ."

In vesting the Commission with the duty of ascertaining "control" or "subject to a controlling influence" of one company by another Congress did not imply that a potential facility to exercise control was sufficient to establish such controlling influence. If this alone were sufficient the Congress would not have made provision for the exemption.

The legislative history of the Act corroborates this view. In the course of the debate on the bill, Senator Wheeler, chairman of the Committee in charge, said, with reference to the 10% clause (79 Cong. Rec., p. 8397):

"That is only prima facie evidence; but even if they hold 40 percent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill.

Again, Senator Wheeler said (79 Cong. Rec. p. 8439):

"No, Mr. President. Let me make a distinction. The Senator from Delaware said: 'Suppose I own 10 percent of the stock of some company.' Unless I control that company I am not a holding company under the terms of this bill. The mere ownership of the 10 percent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company. The Senator may overlook the factor of control. He may show that he actually does not control the company in which he owns 10 percent of stock, and if he does not have control he is not a holding company."

While the majority opinion concedes that this discussion in Congress definitely supports the position of appellant, that view is discarded because it is said that if followed, some language of the Act would appear to be surplusage. Neither the Commission nor the Court is warranted in departing from the purposes expressed because of any doubts

that may exist as to the wisdom of following the course which Congress has marked out.

The evidence in the record so clearly sustains the position of petitioner that the majority opinion, in its final analysis, appears to have deemed it necessary to expand the statute beyond its terms. As if to relieve itself from some haunting conviction that the findings have no basis in substantial evidence, the Court proceeds to elaborate a new pronouncement, whereby the Commission can be sustained even admitting that there is no substantial evidence or not any evidence at all.

According to the contention of all the parties, but three conditions must be met to entitle a petitioner to an order of exemption, to wit; (1) that the applicant is not controlled directly or indirectly by a subsidiary company; (2) that the applicant is not the medium of control of another company by a holding company; and (3) that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * * so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies".

The majority opinion, however, after having quoted the above language goes on to say that there is an additional construction, and "one which gives the Commission the broadest powers", which "arises when the necessity clause is not considered as modi-

fying clause at all, but as a fourth condition. * * * if the Commission found that none of those three conditions were present, it could still deny the application on the ground that there was a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause. We believe the latter construction is correct. * * * " And in conclusion the opinion recites:

> " * * * It is unreasonable to say that Congress intended to exempt from regulation when those three conditions only were not present. It seems apparent that harm might result to the public when none of such factors was present—that is the harm might spring from other factors. Such factors would be covered by the fourth condition, because of its generality.
>
> * * * * * * * *
>
> "As thus construed, the application was properly denied regardless of whether the finding under the necessity clause was sustained by substantial evidence or not."

It seems to me that the opinion of the Court has added to the Act by judicial construction conditions not imposed by Congress and by which the Commission has been relieved of the obligation which requires that the findings be sustained by substantial evidence.

The order of the Commission is arbitrary and capricious, and should be reversed.

[Endorsed]: Opinion and Dissenting Opinion. Filed Apr. 14, 1942. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Saturday, June 6, 1942.

Before: Garrecht and Stephens, Circuit Judges.

[Title of Cause.]

ORDER GRANTING PETITION FOR REHEARING

In the above entitled case this Court (three judges sitting, two judges agreeing, one dissenting) has announced a construction of the Securities and Exchange Act which, if adhered to, will have important and far reaching effect upon the administration of that Act.

The petitioner has filed a motion for rehearing and with it a supporting brief which calls our attention to the fact that our construction of the Act was not intimated in either brief or in the oral argument and that such construction raises serious constitutional questions.

Upon due consideration we have come to the conclusion that the rehearing should be had and accordingly petitioner's request therefor is hereby granted.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Friday, December 18, 1942.

Before: Wilbur, Garrecht, Denman, Mathews, Haney, Stephens and Healy, Circuit Judges.

[Title of Cause.]

ORDER OF SUBMISSION

Ordered petition for review herein argued by Mr. Herman Phleger, counsel for petitioner, and by Mr. John F. Davis, Solicitor, Securities and Exchange Commission, counsel for respondent, and submitted to the Court for consideration and decision, with leave to counsel for respondent to file additional authorities.

At a Stated Term, to wit: The October Term 1943, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Thursday the eighteenth day of November in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge,
Honorable William Denman, Circuit Judge,
Honorable Clifton Mathews, Circuit Judge,
Honorable Albert Lee Stephens, Circuit Judge,
Honorable William Healy, Circuit Judge.

[Title of Cause.]

No. 9918

ORDER AFFIRMING ORDER OF SECURITIES AND EXCHANGE COMMISSION

Order of Securities and Exchange Commission herein affirmed by an equally divided Court.

[Title of Circuit Court of Appeals and Cause.]

DISSENTING OPINION AND CONCURRENCE

Garrecht, Circuit Judge, dissenting:

I dissent from the per curiam decision entered herein denying the petitioner's application, for the reasons hereinafter stated.

This cause has been pending before the court upon a rehearing en banc. Former opinions of this court herein are found in 127 F.2d 378, et seq.

The issues arise on the petition of Pacific Gas and Electric Company to review and modify or set aside an order of the Securities and Exchange Commission, which denied petitioner's application for an

order, pursuant to Section 2 (a) (8) of the Public Utility Act of 1935 (49 Stat. 803, 807) declaring it to be not a subsidiary of the North American Company, a registered holding company owning more than 10% of the petitioner's voting stock.

Pacific Gas and Electric Company, petitioner, in the evidence and also herein sometimes referred to as P. G. & E., is a California corporation, organized in 1905. On March 23, 1912, the Public Utilities Act of California became effective, and since that date the Company could issue securities only with the approval of the Railroad Commission of California. All its securities now outstanding, have been authorized by the said Commission except 15% of its common stock which was issued prior to March 23, 1912. All the Company's public utility properties are located in, and its business is conducted in, the state of California.

The Public Utility Act, hereinafter called the Act, became effective on August 26, 1935 (49 Stat. 803). The portions of said Act pertinent to this discussion are as follows:

> "Sec. 2(a) (8) 'Subsidiary company' of a specified holding company means—
>
> "(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such

company not to be a subsidiary company of such holding company; and

"(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate in the pub-

lic interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. * * * "

Section 6 of the Act (49 Stat. 814) makes it unlawful for a subsidiary company of a registered holding company to issue or sell any of its securities except with the approval of the Commission.

It appears that North American Company, hereinafter called North American, owns, controls and holds with power to vote, 17.71% of petitioner's outstanding voting securities and is therefore, by statutory definition, a subsidiary of North American, unless declared otherwise by the Commission. Following the provisions of the Act, petitioner, on November 29, 1935, sought by appropriate petition to bring itself within the exemptions provided in the Act by alleging and offering to establish that (1) it is not controlled, directly or indirectly, by North American; (2) it is not an intermediary company

through which control of another company is exercised; and (3) its management or policies are not subject to such a controlling influence, directly or indirectly, by North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers, that it be subject to obligations, duties and liabilities imposed in the Act upon subsidiary companies.

On September 4, 1940, the Commission directed a hearing upon such application and on October 10, 1940, directed that such hearing commence. It began on November 12, 1940, and was concluded on January 16, 1941. The hearing was had before a trial examiner. Although there was no real dispute as to the facts as set forth in the trial examiner's report, both counsel for petitioner and counsel for the Commission filed with the trial examiner separate requests for specific findings.

The trial examiner on April 22, 1941, made his report and findings of fact. He found and concluded that petitioner was entitled to the order which it sought. Thereupon counsel for the Commission filed exceptions to the report, and the matter was presented to the Commission upon briefs and oral argument and thereafter on September 10, 1941, the Commission entered its order denying petitioner's application. The case was brought to this court upon petition to review and modify or set aside said order.

The Commission, in concluding its findings and opinion, said:

" * * * we hold that applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

"We desire to emphasize that our holding in this respect is not to be taken to mean that any stigma is cast upon applicant or that we think that applicant is not properly regarded as a California corporation. Nor do we mean to indicate that the influence of North American necessarily is or will be improperly exercised. The only question which we have decided is that, in the circumstances of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company."

Further, the Commission said:

" * * * There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this re-

spect we cannot agree with the conclusions reached by the trial examiner. Our reasons for this decision are as follows:

"First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of demonstrating that its management and policies are not subject to the controlling influence of North American. * * * "

We call attention to the fact that the findings and conclusions of the Commission are based on inference and surmise in many instances in absolute conflict with the testimony which was uncontradicted and not discredited. The Commission made inferences to support its finding, as follows:

North American owns 17.71% of the voting stock in petitioner. The second largest stockholder owns 1.72% of the voting stock. The rest of the stock is owned by corporations and individuals, scattered widely. Of the total voting stock 47.9% is held by non-residents. The Commission said:

" * * * It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract would be offset by the voting

power which the local management could attract. It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes."

North American's holdings have represented from 25% to 30% of the total votes cast at stockholders' meetings from 1931-1940. The Commission said:

"* * * First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management, make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 25 to 30% of the votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum of all but two stockholders' meetings since it became applicant's largest stockholder; if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually 1/3 of applicant's common stock gives North American an effective veto power over any corporate action requiring the consent of 2/3 of each class of stock—e.g., mergers and consolidations."

Petitioner's present president is one Black, formerly an employee of Great Western Power Company. North American acquired control of Great Western in 1925, and in 1927, Black went to New York as vice president of North American—his principal duties at that time being to keep in touch with and assist Great Western and its subsidiaries.

In 1930, following negotiations begun in the previous year between Black and petitioner's then president, the petitioner acquired the securities held by North American in Great Western Power Company and its subsidiaries. It was orally agreed that North American would not interfere with petitioner's management, that North American would be entitled to three members on petitioner's board of directors and one member on its executive committee. Black became a member of petitioner's board of directors as North American's representative. Regarding these facts, the Commission said:

> "It is wholly untrue to characterize North American's relationship to P.G.&E. as merely that of a stockholder holding an investment interest. It now has two of its representatives on P.G.&E.'s board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the 'right' to such representation on applicant's

board of directors and executive committee is, we think, of material significance. We find some significance, too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American; no such reports are sent to any other stockholder."

Further, the Commission said:

"Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to P.G.&E. and as a result of which North American acquired its interest in P.G.&E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North American's interest. It is also significant that since Black became president of P.G.&E., no effort has been made by North American to have representation in the executive committee, and no one in North American's management has followed ap-

plicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances, and, in his dealings with North American, would treat it as merely a large stockholder of P.G.&E."

Admittedly, P.G.&E. is not controlled by North American and is not an intermediary company, therefore clauses (i) and (ii) of Section 2(a) (8) of the Act are not here involved. The only issues arising under clause (iii), which requires petitioner to show that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * * so as to make it necessary or appropriate in the public interest * * * that the applicant be subject to the obligations, duties, and liabilities imposed in this title * * *." Although the initial burden is on petitioner to prove to the Commission that its management and policies are not subject to North America's "controlling influence", the Commission's function is to draw adequate and fair inferences from the evidence. This the Commission failed to do.

It is an admitted fact that petitioner's utility properties are all located, and its business is conducted in the state of California. In this regard the Commission said: "On the basis of the record before us we find that applicant and all of its subsidiary companies are predominantly intrastate in character and carry on their business in California, the state in which each of them is organized,

and that applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California. * * * "

Petitioner is subject to the public utilities act of said state and can issue securities only with the approval of the California Railroad Commission. This state commission by its representatives appeared at the hearing and presented a statement, which was received by the Commission, showing the manner and extent of its regulation of appellant, and in this document the California Railroad Commission stated that it was "aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company.

While the Commission concedes that the evidence shows there is no control of petitioner by North American, the Commission maintains that it may still deny petitioner's application upon the assumption or supposition that merely ownership of 17.71 percent of the stock of petitioner by North American renders it subject to the controlling influence of such holding company despite the fact that there never has been any exercise of control or any effort in that direction and in the face of the evidence of the officers of North American that it holds the stock as an investment only and that there is no intention to exercise any control over petitioner and the further evidence of the officers and management of petitioner that they would not permit such control.

The Question of Control

Referring to the question of control as indicated by stock ownership, the court in Electric Bond & Share Co. v. Sec. & Exch. Com., 2 Cir., 92 F2d 580, 592, said:

> " * * * Congress elected the element of stock ownership, a factor most usually indicative of control, as prima facie evidence of control. The burden of proof, which is cast upon the utility company to prove otherwise, is not onerous. Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's finding be not supported by substantial evidence. * * * "

That case was subsequently affirmed by the Supreme Court of the United States under the same title, 203 US 419. In the latter case the Department of Justice, for the Securities and Exchange Commission, filed an able and carefully prepared brief, discussing various sections of the Act. Upon the subject of stock control, because of the clearness of the reasoning and aptness of application to the present discussion, I quote from the brief the following (Br. for Resp., p. 6, of Apx. A):

> "A holding company by express definition * * * is a company which actually controls operating companies, and not a company which merely has an investment in operating companies. Conversely, a subsidiary company, by express definition * * * is a company actually

controlled by the holding company, and not simply a company in which the holding company has a substantial interest. Ten percent voting stock ownership creates a presumption of control in order to facilitate administration of the Act and to prevent ready evasion. That presumption, however, can readily be rebutted by either the putative holding company or the putative subsidiary company (Section 2(a) (7) and (8) upon a showing that the company does not in fact exercise control. * * * No true investment company—i.e., a company which does not control the operating companies in which it invests—is in any manner affected by it.

The following quotation is also from that brief (Br. for Resp., pp. 197-198):

"* * * a company may readily prove if such be the fact that it does not possess control. Such burden of proof is not onerous because every company has completely within its own organization full knowledge and control of all the facts and the evidence * * * Judicial review is provided to guard against any arbitrary action on the part of the Commission, and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (Section 24(a)). * * * "

With these declarations of the court and from the Commission in mind let us have a look at the testimony as found in the record and which was not contradicted.

The present board of directors consists of five directors who are officers and full-time employees of petitioner, eight directors who are prominent San Francisco business men, and two directors, Fogarty and Freeman, who are admittedly representatives of North American. Neither of these two North American representatives is a member of the executive committee.

All directors and principal officers, with the exception of the two directors who are officers of North American, are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern concern, business or corporation whose business is not principally conducted in California. During the entire period of petitioner's existence the members of the board of directors, with few exceptions, have been residents of San Francisco and vicinity, and have owned and do own and represent substantial stock interests in petitioner, and the fathers of four directors (directors C.O.G. Miller, Norman B. Livermore, A. E. Wishon and W. W. Crocker) were active in the affairs of predecessor companies. All of the directors, with the exception of Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood.

The directors, other than those who are active executives of the Company, and excepting Fogarty

and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are chairmen of boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities, and several are officers or trustees of educational or charitable institutions.

Each of petitioner's local directors to whom the question was propounded, namely, Messrs. Miller, McKee, Crocker, Chickering, Livermore, Coghlan, Palmer, Nichols, McIntosh, Wishon and Black, testified that it was his opinion that North American could not if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting.

Mr. Black testified that he would oppose any attempt by North American to control or influence the management or policies of the petitioner with "every resource at my command" and that he was sure they would not be successful in a proxy fight because:

> "This company has a rather unique position in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that

feeling. I think 48 per cent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.

"Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the side of the company in any such fight."

Director Fogarty, the representative of North American on the board, testified that the management or policies of petitioner were neither directly or indirectly subject to the controlling influence of North American. Nor had that company ever attempted to influence or control the management. He also said that as a practical matter it would not be possible. Mr. Freeman, the other representative, corroborated this view. Mr. Fogarty never attended a directors' meeting. This is also true of Mr. Freeman, who has never been in California.

The testimony of all of these witnesses is not contradicted.

With the exception of Fogarty and Freeman the evidence clearly indicates that the other directors, most of whom were prominent business men of San

Francisco and vicinity, were tough-fibered individuals who could not be dominated by outside influences. That was the substance of the testimony and so far as these persons are concerned this testimony admittedly is uncontradicted. In determining the question of "controlling influence" the evidence must be considered and this the Commission did not do. It was simply waved aside as of no importance whatever.

It is probably worth remarking in this connection that North American has never solicited proxies; in fact, its officers or representatives have never voted its own stock, its proxies having been sent to other stockholders. If there existed any apprehension that North American might seek proxy control, the Commission has the power to prevent North American from soliciting any proxy.

To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose. Thus, the selection of James B. Black as president of appellant upon the unexpected death of Mr. Hockenbeamer, who had been president for many years, is pointed to as unmistakable proof of the evil influence exerted by North American, because at the time of Black's appointment he was the vice-president of North American.

It must be admitted that Black probably was as well qualified for the position as anyone anywhere; his career is altogether a notable one. His personal, professional, and administrative achievements are detailed at some length in the record, from which I

summarize briefly: He came with his parents to California at the age of twelve and has lived in San Francisco and vicinity ever since, with the exception of a short period when he resided in New York and served as vice-president of North American. He was educated in the schools of Oakland and San Francisco and at the University of California, from which he was graduated in 1913 in engineering. After graduating he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western operating in San Francisco. About 1915, the properties of City Electric Company were taken over by Great Western, and Mr. Black successively engaged in sales, sales engineering, and administrative work in its San Francisco division. Later he became division manager, assistant general agent and general sales manager, and acting general manager, and in 1922 was made vice-president, general manager and a director of that company. After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February, 1927, when he went to New York at the invitation of North American as one of its vice-presidents.

His selection as president of Pacific Gas and Electric Company was entirely the result of the action of the California directors of that company, many of whom were acquainted with Black's capabilities. The fact that he was a Californian, that he was familiar with some of the properties of the company, and had wide experience were deemed qualifications, and his selection met with the unanimous

approval of the board of directors. No suggestion of Mr. Black's election was made by anyone in North American; his selection was not anticipated by the officers of that company, to whom it was a surprise. There is no evidence in the record indicating that North American played any part in the choice of Black as president of the petitioner, other than to consent when the California directors asked permission to offer the position to him. When Black accepted the position he assured the California directors that he would sever all connections with North American. He has never sought or received the advice, approval, or recommendations of North American or its officers on any dividend rate, salary, refinancing, or any other pending matter. There is no difference between the information received by North American or in the relations with petitioner since Black became president and the situation existing before that time.

Not only did the Commission disregard the uncontradicted evidence substantiating that there was no "control" or "controlling influence", it also disregarded a specific and important instance revealed by the evidence which very persuasively negatived such control. At one of the meetings of the board of directors of Pacific Gas and Electric, at which the question of declaring a dividend was up for consideration, it was voted that the dividend for that year be declared at the rate of six per cent instead of the usual eight percent. The representatives of North American requested the board to

reconsider this action, but it did not accede to the request.

Notwithstanding the uncontroverted evidence to the contrary the Commission went off into the realm of speculation as to what might happen if North American should undertake to engage in a proxy fight with appellant's existing management for control, and it determined that the mere fact that there might be a strong possibility (based likewise on conjecture) that North American could prevail was itself proof of "susceptibility" to a controlling influence.

There are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to "events which might happen" but "not what actually happened". As approving these methods of the Commission quotes an excerpt from Labor Board v. Link-Belt Co., 311 U.S. 584, 597, as follows: "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts. * * * The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." But here there is no conflicting evidence to appraise, and as to weight and credibility of testimony it must be noted that the witnesses who testified contrary to the findings were outstanding men of affairs in California, and they were not con-

tradicted or impeached, and no reason appears in the record why they should be discredited.

According to the Commission petitioner was required to "demonstrate" non-control or influence by North American. The Act does not require any such mathematical extreme which excludes possibility of error. 23 CJ 9. It is sufficient if such showing is supported by substantial competent evidence which is not contradicted. Due process requires that the competent evidence adduced be fairly considered by the Commission on its merits. As was said by Justice Brandeis in speaking for the court in the Chicago Junction Case, 264 US 258, 265, "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action." In Morgan v. United States, 298 US 468, 480, Chief Justice Hughes said:

> " * * * The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. * * * "

This court is not called upon to determine the

credibility of witnesses or to reach a conclusion upon substantially conflicting facts. Indeed, no such question is presented here, since the Commission has said in its opinion that——

> "There is almost no dispute as to the facts in this case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner",

who found that Pacific Gas is not in fact controlled by, or subject to the controlling influence of, North American.

The Commission relies strongly on Detroit Edison Co. v. Securities and Exchange Commission, 119 F2d 730; Public Service Corporation of New Jersey v. Securities and Exchange Commission, 129 F2d 899; and Hartford Insurance Company v. Securities and Exchange Commission, 129 F2d 794. A glance at these cases will show how utterly different were the facts there presented.

In the Hartford case, 129 F2d 794, two affiliated holding companies owned 21.98 percent of the petitioner's voting stock. Not only was the president selected from one of the subsidiaries of the holding company but he frequently had advice from his former associates and secured help from the holding company's engineers in effecting changes in the petitioner's business methods. Petitioner for years submitted a preliminary draft of its annual

budget to the holding company. It obtained much of the gas that it sold to its customers through some community of interest arrangement with subsidiaries of the holding company. The cost of the gas that petitioner so purchased prior to 1940 amounted to 58 percent of all its regular operating expenses.

In the Public Service Corporation of New Jersey case, 129 F2d 899, the court pointed out that the petitioner was organized pursuant to plans submitted by the holding company which not only subscribed for 25 percent of its original stock but also underwrote part of the stock issued.

Further under contract it supplied petitioner with engineering, purchasing and general advisory service.

The president of Public Service Corporation testified that he could not have become president of the corporation against the wishes of the holding company and that no plan of the kind contemplated in its organization could have been accomplished without the affirmative approval of the holding company. See Public Service Corp. of New Jersey v. S.&E.C. Release No. 2998, Sept. 15, 1941.

There were many other instances of interlocking relationships, indeed, the record was so replete with evidence of the participation of the holding company in Public Service Corporation affairs that the Court passing on the appeal was moved to remark, 129 F2d 901 that the evidence supporting the findings was so conclusive and the contentions of petitioner were so wholly lacking in merit as to border on the frivolous.

Probably the case the Commission most relies upon is the Detroit Edison Co. v. Securities Exchange Commission, 119 F2d 730, as this case is cited in the Commission brief not fewer than nine times.

It is submitted that the facts in that case are so different from the one before us that it cannot be considered an authority to support the action of the Commission here. In the Detroit Edison case, by agreement with two existing companies, a syndicate organized by North American acquired their stock and organized the Detroit Edison Company. Its officers and directors were all designated by North American. On behalf of its syndicate North American then offered all of the stock of the corporation and agreed to finance and furnish other assistance to the new company on certain terms. By the deal the syndicate acquired three million dollars of Edison's first mortgage bonds and fifty thousand shares of its stock. The Edison then began operations. Thereupon the syndicate dissolved, and North American retained more than 10 per cent of petitioner's outstanding voting securities. The record shows that the North American dominated the board of directors through the years, and at the time of the hearing the majority of directors still had affiliations with North American. There were other intercompany relationships too extended to detail here, but referred to in the opinion and which had been discontinued not long before the hearing. From these facts it was concluded that in the light of Edison's origin and the unbroken continuity of

North American's officers, directors, and designees on its board, and its absolute domination for many years by the parent company, it was not entitled to an order granting exemption from the statute. In summing up the situation the court said:

> "The fact that the North American Company had abandoned some of the characteristics of 'controlling influence' over the petitioner at the time of the hearing, did not require the Commission to disregard prior interrelated activities. There is no showing that its latent power to resume such control had been extinguished. The relationship is such that they may enter into similar activities in the immediate future. * * *
>
> "* * * Giving due weight to the past transactions of petitioner with the North American and the continuing opportunity for the resumption of such activities and the extent of the petitioners business and the widely scattered ownership of its stock, the Commission committed no error in denying petitioner exemption from the present Act." (119 F2d at pp. 739-740.)

All the evidence in the case before us shows a complete absence of such relationships and of any control throughout the period since North American became an owner of certain stock of Pacific Gas and Electric Company because of the transfer by it of certain utility properties that it had theretofore owned.

It is significant too that those incidents of relationship which are referred to as indicative of controlling influences in practically all of the decisions which have been cited to us by the Commission are notably absent in this case as the trial examiner pointed out:

> "There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930. (The agreement by which PGE acquired the properties of North American in California.)
>
> "Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant.
>
> "There has been no exchange of operating information between the Applicant and the admitted subsidiaries of North American.
>
> "There have never been any intercompany loans or financial transactions between the Applicant and North American or its subsidiaries.
>
> "All of Applicant's major acquisitions and construction projects have been and are decided upon, budgeted and carried out within the PG&E organization and entirely independent of North American at all stages.
>
> "North American's organization has never assisted Applicant in the preparation of any Registration Statements, nor has its Secretarial Department ever assisted Applicant in any manner.
>
> "Applicant and North American do not em-

ploy the same accountants, attorneys or engineers.

"Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition. North American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon.

"No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other."

The Commission admits that the record does not reveal any past attempt by North American to interfere with its management or policies. It is likewise conceded that there is no evidence of actual control, nor, as has been shown, is there any substantial evidence from which any legally sound inference can be drawn that there ever was any effort whatsoever by North American to subject appellant to any controlling influence. Nor is there any testimony in the record from which any fair inference can be drawn that petitioner was subject to the controlling influence of North American.

Subject to a Controlling Influence

Petitioner makes the point that the Act requires some present controlling influence, not a speculative future influence, as ground for denial of an application for a declaration. The term "subject to a

controlling influence" means that approximately as of the time of the hearing the controlling influence must be actually existent even though not actively executed and that some mere potential or possible or speculative influence is not sufficient. The statute seems to imply such an interpretation. It reads "subject to a controlling influence". The word "subject" suggests some present existing quiescent controlling power that could be rendered active at will. This may also be inferred because in this very Section 2 (a) (8) it is provided that even where the Commission has acted favorably and made an order of exception this finding of the non existence of "controlling influence" may be only conditional and temporary, and "The Commission, upon its own motion or upon application, shall revoke the order * * * whenever in its judgment such modification is necessary" to effectuate the law. These provisions indicate that the Congress intended to cover a situation where there might be some "susceptibility" of such influence in the future but where none presently existed and that it did not intend that a declaration should be withheld in the absence of present active controlling influence.

From the discussion in Congress at the time the Act was under consideration and as well from the fair and ordinary meaning of the language, the phrase "subject to a controlling influence" does not mean, as the Commission found, that appellant was required to "demonstrate" that its management and policies were not "susceptible to control" by North American. "Subject to a controlling influence" is

not the equivalent of "susceptible to a controlling influence". "Susceptible" and "subject" are not interchangeable or synonymous terms. The word "susceptible" connotes an especial liability to mental and emotional impressions. Advisedly that expression was not used in the statute. But the word "subject" is used, and here it occurs in relation with "control", and in that sense it must correctly be continued as meaning under the power or dominion of another. It is synonymous with subordinate, inferior,[1] "To control" means to exercise a restraining or direct influence over; to dominate; regulate; hence to hold from action; to curb; to subject.[2] Moreover, "controlling" means the act or fact of exercising restraining influence over, which conveys the idea of a continuing process. Thus, "subject to a controlling influence", as stated in the statute, is not the same thing as "susceptibility" to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute as above noted the Commission is in a position to act at once if ever the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the

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[1]See Webster's New International Dictionary.

[2]Ibid.

facts showed a lack of any actual and existing control or controlling influence.

It is also clear that the vague, artificial tests here em ployed are not sanctioned by the Act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence.

The facts presented to the Commission and all reasonable inferences, deductions, and conclusions to be drawn therefrom, considered in their entirety and in relation to one another, negative the findings of the Commission. The inferences which are suggested as supporting the order of the Commission are based on mere suspicion. In Labor Board v. Columbian Co., 306 US 292, 299-330, Mr. Justice Stone said:

> "* * * But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. * * * Substantial evidence is more than a scintilla, and must do more that create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' * * *"

In vesting the Commission with the duty of ascertaining "control" or "subject to a controlling influence" of one company by another Congress did not imply that a potential facility to exercise control was sufficient to establish such controlling influence.

If this alone were sufficient the Congress would not have made provision for the exemption.

The legislative history of the Act corroborates this view. In the course of the debate on the bill, Senator Wheeler, chairman of the Committee in charge, said, with reference to the 10 percent clause (79 Cong. Rec., p. 8397):

> "That is only prima facie evidence; but even if they hold 40 percent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill."

Again, Senator Wheeler said (79 Cong. Rec., p. 8439):

> "No, Mr. President. Let me make a distinction. The Senator from Delaware said: 'Suppose I own 10 percent of the stock of some company.' Unless I control that company I am not a holding company under the terms of this bill. The mere ownership of the 10 percent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company. The Senator may overlook the factor of control. He may show that he actually does not control the company in which he owns 10 percent of stock, and if he does not have control he is not a holding company."

Neither the Commission nor the Court is warranted in departing from the purposes expressed because of any doubts that may exist as to the wisdom of following the course which Congress has marked out.

There must be some substantial evidence before the Commission that there exists such a controlling influence as would enable the holding company to bring about the evils enumerated in the Act. There is no such showing in this case.

On the contrary, the evidence affirmatively shows, as the examiner in his findings pointed out, the absence of the evils which the Act was designated to prevent.

Pacific Gas and Electric Company never had any financing, purchasing, service, management, construction or similar contracts with North American or its affiliates.

North American has never had anying whatever to do with accounting practices and rate dividends and other policies of Pacific Gas and Electric Company.

There are and have been no management, service, sales, construction or other contracts in existence, nor has there been, nor is there any evidence of control or influence exerted or attempted to be exerted over Pacific Gas and Electric Company's finances, management, and policies.

Present prospective investors in Pacific Gas and Electric securities can obtain information necessary to appraise its financial condition and earning power. It issues a comprehensive annual report and keeps

its accounts in accordance with a uniform system prescribed for gas and electric corporations by the California Railroad Commission, all of which are open to the public. During all the years North American has been a stockholder in the Pacific Gas and Electric Company, it has never had any transactions with Pacific Gas and Electric Company other than the original purchase from it in 1930.

There has been no increase or extension of North American's interest in Pacific Gas and Electric, and its relative voting power is less than it was immediately after it became a stockholder in 1930. The list enumerating the absence of many evils usually relied upon by the Commission in these cases is extended at length in the findings of the examiner, which have not been questioned. They are too numerous to detail here.

Moreover, under the Act the Commission now actually exercises over North American, as a registered holding company, such control as is itself sufficient to prevent the occurrence of any transaction or dealing between the companies as would violate the Act. While no such transactions have ever occurred and the evidence that they would not occur is uncontradicted, still the Commission by virtue of this control over North American can at once prevent them should they be proposed. Indeed, the Commission has already made an order which was affirmed by the Circuit Court of Appeals for the Second Circuit, North American Company v. S.&E.C., 133 F. 2d 148, under which North American is required to dispose of its stock in petitioner.

To sustain the Commission on the record here would require us to hold, as the court did on the first hearing, that its determination of what is necessary in the public interest is a matter within the uncontrolled discretion of the Commission. This is not the proper interpretation of the statute and counsel representing the Commission do not so contend.

The order of the Commission not being supported by substantial evidence should be set aside.

Mathews, Circuit Judge, joins in this dissent.

[Endorsed]: Dissenting Opinion and Concurrence. Filed Nov. 22, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

DECREE.

Upon petition to review an Order of the Securities and Exchange Commission.

This cause came on to be heard on the transcript of the record upon petition to review an order of the Securities and Exchange Commission, and was duly submitted.

On Consideration Whereof, It is now here ordered, adjudged and decreed by this Court that the order of the said Securities and Exchange Commission in this cause be, and hereby is affirmed.

[Endorsed]: Filed Nov. 18, 1943. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals
for the Ninth Circuit

Excerpt from Proceedings of Wednesday, February 23, 1944.

Before: Wilbur, Garrecht, Denman, Mathews, Stephens and Healy, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR REHEARING AND STAYING ISSUANCE OF ORDER OF COMMISSION, ETC.

Upon consideration of the petition of Pacific Gas and Electric Company, filed December 4, 1943, and within time allowed therefor by rule of court, for a rehearing of above cause, and good cause therefor appearing, It Is Ordered that said petition be, and hereby is denied.

It Is Further Ordered that the order of the Securities and Exchange Commission of September 10, 1941, denying the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of the North American Company, be, and hereby is stayed until after the Supreme Court of the United States disposes of the petition for certiorari to be hereafter made by said petitioner, provided however that said petition for writ of certiorari shall be filed in the office of the clerk of the Supreme Court of the United States on or before April 10, 1944, and the decree of this Court be, and hereby is stayed accordingly.

[Title of Circuit Court of Appeals and Cause.]

Certificate of Clerk, U. S. Circuit Court of Appeals for the Ninth Circuit, to Record Certified Under Rule 38 of the Revised Rules of the Supreme Court of the United States.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing five volumes, consisting of seventeen hundred seventy-seven (1777) pages, numbered from and including 1 to and including 1777, to be a full, true and correct copy of the entire record, excluding certain original exhibits, of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 6th day of March, 1944.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPPLEMENTAL
TRANSCRIPT OF RECORD

FILED
APR 10 1944
CHARLES ELMORE CROPL
CLER

Supreme Court of the United States

October Term, 1943

No. 836 873

PACIFIC GAS AND ELECTRIC COMPANY, a Corporation,

Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

VOLUME VI

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UPON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Rotary Colorprint, 590 Folsom St., San Francisco

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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File No. 31-55

In the Matter of

PACIFIC GAS & ELECTRIC CORPORATION.

REPORT AND FINDINGS OF FACT BY THE TRIAL EXAMINER

1. A joint application was filed on November 29, 1935 by Pacific Gas & Electric Corporation (hereinafter referred to as applicant or P. G. & E.) and Great Western Power Company of California, (hereinafter referred to as Great Western), (a subsidiary of P. G. & E.), under Section 2(a) (8) of the Public Utility Holding Company Act of 1935, for an order declaring that neither P. G. & E. nor any of its subsidiaries are subsidiaries of The North American Company (a New Jersey corporation), (hereinafter referred to as North American), the owner of 17.71% of the voting securities of P. G. & E. The application alleged that (1) it was not controlled, directly or indirectly, by North American (either alone or pursuant to an arrangement or understanding with one or more persons) either through one or more intermediary persons or by any means or device whatsoever; (2) that it was not an intermediary company through which such control of another company was exercised, and (3) that its management or policies were not subject to a controlling influence, directly or indirectly, by North American (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate

in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935 upon subsidiaries of registered holding companies.

Said application also alleged that Applicant owned all of the voting securities of Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, and Midland Counties Public Service Corporation (hereinafter referred to as Midland); owned over 99% of the voting securities of Great Western, which owned all of the voting securities of Napa Valley Electric Company, Feather River Power Company and Great Western Power Company and two-thirds of the voting securities of California Electric Generating Company; owned over 89% of the voting securities of San Joaquin Light and Power Corporation (hereinafter referred to as San Joaquin); and owned 45.8% of the voting securities of Vallejo Electric Light and Power Company (hereinafter referred to as Vallejo), over which company, however, it denied the existence of control or a controlling influence; that each of the aforesaid corporations were public-utility companies organized under the laws of the State of California (where Applicant was and is domiciled) and carried on their operations wholly within that State; and that Applicant did not own in excess of 10% of the voting securities of any other public-utility company.

Said application further alleged that Applicant was and is predominantly a public-utility company

whose operations do not extend beyond the State of California. (Appl. Ex. 1)

2. On November 6th, 1940, Applicant filed an Amended and Supplemental application re-alleging the grounds for its application under Section 2(a)(8) of said Act[1] and further alleging that on

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(1) The appropriate portions of that section are as follows

"(8) 'Subsidiary company' of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an

July 30, 1936, Mt. Shasta Power Corporation, Sierra and San Francisco Power Company, Modesto Gas Company, Great Western Power Company of California, Napa Valley Electric Company, Feather River Power Company, Great Western Power Company and California Electric Generating Company were dissolved, each of these companies having distributed its assets to Applicant; that on December 28, 1939, Midland was dissolved, having previous thereto distributed its assets to Applicant; and that San Joaquin had distributed all of its assets, except a sum of money held in reserve for distribution to certain minority stockholders whose rights had not been judicially determined, to Applicant and was in the process of dissolution. The allegations with respect to Vallejo Electric Light and Power Company were the same as in the original application (Appl. Ex. 2).

3. The application and amended application included a request for an order under Sections 3(a)

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arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies."

(1) and (2) exempting P. G. & E. and its subsidiaries from the provisions of the Act.

4. Since North American owns more than 10% of the outstanding voting securities of applicant, the latter is a subsidiary of North American by virtue of Section 2(a)(8)(A) of the Act. Failure to establish that any one of the three conditions, prescribed in Clauses (i), (ii) and (iii) of Section 2(a)(8)(B) exists, requires a denial of the applications.[2] Accordingly, Applicant must prove the allegations in its application (see findings 1 and 2) if it is to be entitled to the order it desires.

5. Pursuant to the provisions of the Public Utility Holding Company Act of 1935 and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, an order of the Commission dated September 4, 1940, directed a hearing on these applications and an order of the Commission dated October 10, 1940, designated the undersigned, herein referred to as the Trial Examiner, as the officer to take evidence in these matters, and changed the date and place of the hearings. (Comm. Exs. 1-4 incl.) Public hearings were held pursuant to said orders in San Francisco, California, November 12-15, 18-20, 22, 25 and 26, 1940, and at the offices of the Commission in New

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(2) Cf. in re Northern Natural Gas Company, Holding Company Act Release No. 1618, and later cases under Section 2(a)(8). SEC. v. Sunbeam Gold Mines Co. 95 Fed. (2d) 699 at 701.

York City on January 15-16, 1941.[3] The record consists of 1,685 pages of testimony.[4] 48 exhibits were offered in evidence by the Applicant; 141 exhibits by counsel for the Commission and 4 exhibits by the California Railroad Commission in connection with a prepared statement (RR Comm. Ex. 1 of 22 pages), made a part of this record pursuant to the request of said Commission (3, 5, 7).

6. The Applicant was represented by Herman Phleger, Esq. of the firm of Brobeck, Phleger & Harrison, William B. Bosley, Esq., General Counsel of the Pacific Gas & Electric Corporation and Robert H. Gerdes, Esq., all of San Francisco, California. The Commission was represented by Esther M. Calkin, Esq. Ira H. Rowell, Esq., attorney for the California Railroad Commission, attended all the sessions of the hearing in San Francisco, although the California Railroad Commission did not ask permission to intervene (3, 10-1, 1417).

7. Edward P. E. Troy, a taxpayer of San Francisco for over 50 years and a consumer of Pacific Gas & Electric Corporation, appeared at all of the sessions of the hearing in San Francisco begin-

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(3) Notice of this hearing was given generally by Press Releases 2276 and 2325 (1935 Act) on September 5, 1940 and on October 14, 1940. (Comm. Exs. 3, 4) The Commission order was published in the Federal Register on September 6, 1940, Vol. 5, #174, p. 3587 (4).

(4) Figures in parentheses, unless otherwise indicated, refer to the pages in the transcript of testimony. These references do not exhaust the Testimony believed to support the findings.

ning November 13, 1940 (252) and, upon his reading into the record a Securities and Exchange Commission order of November 19, 1940 (Release 2392 (1935 Act) November 23, 1940), denying his request to be permitted to intervene, but permitting his participation to the extent of introducing evidence and cross-examining witnesses (1187-93), he was extended such privilege as the record will show (252, 1269, 1294-1375). He offered a P. G. & E. rate schedule for San Francisco as an exhibit.

8. Neither the filing of a trial examiner's report, the submission of proposed findings of fact by the Commission, requested findings of fact by counsel for the Commission, nor the right to file briefs and make oral argument before the Commission prior to the entry of findings and opinion of the Commission, has been waived by the Applicant. Counsel for the Applicant has moved that a trial examiner's report and findings be made and filed (9-10, 1415-6, 1683-4). The Commission has directed the Trial Examiner to file a trial examiner's report herein. Requested findings of 246 pages has been filed by counsel to the Commission, and requested findings of 64 pages has been filed by counsel for the Applicant.

THE APPLICANT

9. Applicant was incorporated under the laws of the State of California on October 10, 1905 (Appl. Ex. 14) by Messrs. E. J. DeSabla, Jr., John Martin, Frank G. Drum, G. W. McEnerney, John S. Drum, John A. Britton, Cyrus Pierce, Carl Tay-

lor, George K. Weeks, F. D. Stringham, Merrill O. Evans, Jr., Alexander N. Kemp, G. W. Lewis, C. R. Parker, and L. F. Young. All of these gentlemen except Mr. Taylor were then residents of San Francisco, Oakland, Berkeley or Alameda, California. This group included large stockholders of California Gas and Electric Corporation (a California corporation). The P. G. & E. was created for the purpose of bringing about a merger and consolidation of the properties and business of the California Gas & Electric Corporation with those of San Francisco Gas & Electric Corporation (a California corporation) (26). Others in the organizing group were or had been associated with N. W. Halsey & Co., an investment banking firm (130-4). The stock of these constituent companies was first acquired, their physical properties were then taken over in 1908 and 1910, and prior to January 1, 1912, the Applicant directly entered the public utility business. (Appl. Ex. 2, p. 20, Ex. 3) (26, 29-30)

CONSTITUENT COMPANIES

10. About 1884, Pacific Gas Improvement Company, a local corporation organized by the father of Mr. C. O. G. Miller, a director of Applicant, acquired the operating properties in San Francisco of United Gas Improvement Company of Philadelphia, a subsidiary of United Gas Improvement Company. In 1903, Pacific Gas Improvement Company was consolidated with San Francisco Gas and Electric Company (245, 517-20), which in 1906 be-

came a part of the P. G. & E. system. (Appl. Ex. 3)

11. In the early nineties, E. J. DeSabla, Jr., then interested in gold mining in Nevada County, California, and John Martin, Pacific Coast agent for the Stanley Electric Manufacturing Company, built a hydro-electric plant on the South Yuba River near Nevada City, California, and organized the Nevada County Electric Company.[5] A few years later Martin formed the Yuba Power Company and built a hydro-electric plant to supply electricity to Brown's Valley and Marysville, California. In 1900 they incorporated the Bay Counties Power Company to which was transferred the properties of the Yuba Electric Power Company[6] and Nevada County Electric Power Company. Bay Counties Power Company constructed a transmission line to Oakland and shortly thereafter Martin and DeSabla acquired control of Oakland Gas, Light & Heat Company and several small companies supplying electricity to limited areas in north central California. In 1901 the California Gas & Electric Company was organized as a successor to and acquired all of the Martin-DeSabla controlled companies (20-5, 31, 605). (Appl. Ex. 3)

12. In 1897, W. H. Crocker and associates organized the Standard Electric Company of California which initially supplied power to mines and towns in Amador and Calaveras Counties and later extended its lines to Stockton, Oakland and San

(5) Appl. Ex. 3 shows this as Nevada County Electric Power Company.

(6) Successor to Yuba Power Company.

Francisco. Between 1901 and 1905 Standard Electric Company of California, Sacramento Electric, Gas & Railway Company, and a number of other smaller companies merged with California Gas & Electric Company (24-6) (Appl. Ex. 3).

13. During the first twenty-five years of its existence Applicant acquired through mergers, consolidations and purchase numerous operating utility companies, subsequently transferring and consolidating the physical properties with its own (29-30). Today Applicant represents the consolidation of over 400 separate companies, some of which were in operation as early as 1850. (Appl. Ex. 3) (19, 21-30)

14. Messrs. Martin and DeSabla were the moving spirits in Applicant's affairs for several years after its organization although Mr. Frank Drum, its first president, and Mr. John A. Britton, its first General Manager, were the active officers during its early history, devoting all of their time to Applicant's development and operations (32-3, 128-30, 244, 525, 558, 606).

PHYSICAL PROPERTIES

15. Applicant is one of the largest public utility companies in the United States. Its balance sheet as of June 30, 1940, shows utility plant of $731,346,410 (Appl. Ex. 36f).[7] Its principal business is the production, purchase, transmission, distribution, and sale of electric energy and the purchase,

(7) See findings #28, 29.

transmission, distribution and sale of natural gas throughout a large part of Northern and Central California (Appl. Exs. 4, 7, 10). It also distributes and sells water to the public in a number of communities (62); produces and sells steam in parts of San Francisco and Oakland; operates a street railway and bus system in Sacramento; and, as an incident to its gas and electric business, sells some gas and electric appliances; all in California and not elsewhere. (Appl. Ex. 2, pp. 7-8) (98, 143) Applicant constitutes a unified system operating in territory which constitutes a geographic and economic unit and it has a highly diversified load permitting maximum use of facilities (68).

16. Applicant serves with electric energy 46 counties in Northern and Central California, including 137 incorporated cities and towns, 235 unincorporated communities and extensive rural areas, all contiguous territory. As of July 31, 1940, it served 911,035 customers with electricity (54-7, 754-6) (Appl. Ex. 33).

Applicant owns and operates forty-seven hydroelectric generating plants having a total capacity of 1,143,688 horsepower, (not including two Hat Creek plants of 33,512 horsepower, operated under leases), nine steam-electric generating plants having a total capacity of 575,905 horsepower, 6,138 miles of high voltage transmission lines, and approximately 33,306 miles of distribution lines with 485 substations. It purchases power from 9 nonaffiliated intrastate operating companies and secures what is commonly referred to as Hetch Hetchy

power on a consignment basis from the City of San Francisco (55-6).

All of the aforesaid electric plants, transmission lines and distribution lines are physically interconnected, are regulated and controlled from a central dispatching station in Oakland, and constitute a single unified public utility system operated as a unit (54, 64) (Appl. Ex. 7).

17. Applicant owns and operates an extensive gas transmission and distribution system in Northern and Central California. It sells and distributes gas in 101 incorporated cities and towns, 79 unincorporated communities, and adjacent rural areas. As of July 31, 1940, it served 636,394 customers with gas. (Appl. Exs. 7, 33)

More than ninety-six per cent of the gas customers are served with natural gas, all of which Applicant purchases in California from producers who produce the same in California (61).

Applicant owns fifteen gas generating plants. Six of these plants, having a total daily capacity of $3,372,000 cubic feet of gas, are situated in areas which are not connected with the natural gas transmission lines, and supply such areas with manufactured gas. The remaining nine plants, with a total daily capacity of 147,628,000 cubic feet are used as stand-by against interruption of natural gas service and to meet demands in excess of the capacity of the gas transmission lines (Appl. Ex. 2, pp. 6-7).

Applicant has 809 miles of gas transmission lines, and 7,630 miles of distribution line. Applicant's

gas system constitutes a unified system which is operated as a unit and is under the control of a single dispatcher (60, 64-5).

18. The territory served with gas is included in the general territory served with electric energy, and the great majority of gas customers are also customers for electric energy (62), thus permitting substantial economies in selling, servicing, meter reading, billing and collecting (71-2). These economies and other services are available to intermediate and contiguous rural areas served (57-8, 69, 78, 137).

19. All of the public utility properties of Applicant are located in California (98). Applicant does not purchase or sell any gas or electricity outside of California or at the state line (98, 143-4), and all gas sold or distributed by Applicant is produced in California. Thus it, and every subsidiary company thereof which is a public utility company, are predominantly intrastate in character, and carry on their business exclusively in California, in which they are organized (98, 144). (Appl. Exs. 4, 7, 10)

Applicant owns two electric transmission lines extending to Summit, California (located about 20 miles from the California-Nevada state line) which connect there with the transmission lines of Sierra Pacific Power Company, a public utility company operating in California and Nevada, with which Applicant has a contract for the sale of energy and for stand-by service (140). Applicant also owns two transmission lines which connect near Delta, California (located about 70 miles south of the

Oregon-California state line), with the transmission lines of The California Oregon Power Company, a public utility company operating in California and Oregon with which Applicant has a contract for the purchase at Delta of a maximum of 42,600 Kilowatts of electric energy at wholesale (141) (Appl. Ex. 2, pp. 8, 9). Applicant has no other contracts for the sale or purchase of gas or electric energy with companies operating outside California (141) (Appl. Exs. 4, 11).

20. Since prior to January 1, 1912, when it directly entered the public utility field as an operating company, the P. G. & E. has been predominantly an operating public utility corporation and its public utility operations have been at all times and now are confined to California (26, 29-30, 98, 143-4). It does not operate any portion of its electric and gas utility business through any public utility subsidiary, except the Vallejo Electric Light & Power Company (see findings #177-9).

21. Applicant claims that its electric residential rates as of October 8, 1940 were 46.1% of what they were on January 1, 1920, due to reductions in its electric rates during the years 1921, 1923, 1928, 1930, 1936, 1937, 1939 and 1940, totaling $23,408,900. Its gas residential rates as of October 22, 1940 were 46.3% of what they were on January 1, 1920, due to the introduction of natural gas with its higher heating value in 1930, which resulted in a saving to Applicant's customers of $8,173,000 and the gas rate reductions in 1936, 1938, 1939, and

1940, totaling $8,532,600 (73-5, 80-3, 137-8, 1325-34, 1347-72) (Appl. Ex. 8).[8]

FINANCIAL

22. Applicant's Gross Operating Revenues and Net Income before and after Federal Taxes, for the years beginning 1937 have been (Appl. Exs. 2, 36g):

Year	Gross Operating Revenues	Net Income	
		Before Federal Taxes	After Federal Taxes
1937	$100,443,115	28,628,418	24,910,747
1938	101,424,595	27,612,224	23,430,288
1939	107,175,352	30,417,653	25,678,151
1940 (first 6 mo.)	54,089,275	16,038,723	12,973,262

Approximately 70% of the gross operating revenues are from the electric department and 29% from the gas department.

23. The following tabulation reflects earnings per share and the dividends paid on Applicant's common stock the years ending December 31, 1920 to December 31, 1939, inclusive: (Appl. Exs. 24, 41) (214-23, 307-8, 1325)

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(8) The savings indicated represent the difference between the sums actually paid by consumers after a reduction and the sums such consumers would have paid for the same quantities under the old rates (73-5).

Year	Earnings Per Common Share	Dividends Paid
1920	$ 6.30	$5.00 cash
1921	8.34	5.00 "
		2.00 stock
1922	11.57	5.50 cash
		2.00 stock
1923	10.25	6.50 cash
1924	8.84	8.00 "
1925	9.53	8.00 "
1926	10.16	8.00 "
1927[9]	2.66	2.00 "
1928	3.05	2.00 "
1929	2.85	2.00 "
1930	2.62	2.00 "
1931	2.72	2.00 "
1932	2.09	2.00 "
1933	1.61*	1.75 "
1934	1.83*	1.50 "
1935	2.46*	1.50 "
1936	2.71*	1.62½"
1937	2.71	2.00 "
1938	2.48	2.00 "
1939	2.84	2.00 "

* These amounts were respectively 1.48, 1.52, 2.10 and 2.25 after provision for disputed gas revenues.

24. The following is a condensed profit and loss statement of Applicant on a consolidated basis for the periods indicated:

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(9) As of 12-31-26, the par value of all classes of Applicant's stock was reduced from $100 per share to $25 per share (325).

	1937	1938	1939	Jan. 1 to June 30, 1940
Gross Revenues	$100,443,116	101,424,595	107,175,353	54,089,276
Net Operating Revenue	40,404,495	39,602,947	42,849,416	21,820,180
Gross Income	40,752,252	39,811,961	43,169,385	21,932,439
Net Income Transferred to Surplus[10]	24,910,748	23,430,288	25,678,151	12,373,262

reduced from $100 per share to $25 per share (325).

(Exhibits to Amended and Supplemental Application—Appl. Exs. 2, 36 g, m)

25. The following is a condensed balance sheet of Applicant on a consolidated basis as of June 30, 1940 (Appl. Exs. 36f, m).

Assets	
Utility Plants and Properties	$731,346,410.06
Investment and Fund Accounts	67,765,290.81
Current and Accrued Assets	25,799,340.13
Deferred Debits	20,036,341.18
Capital Stock Discount and Expense	7,933,068.11
Reacquired Long Term Debt	394,000.00
Total	$853,274,450.29
Liabilities	
Capital Stocks	
Common	$169,973,925.00
Preferred	154,862,525.00
Total Capital Stocks	324,836,450.00
Premium on common capital stock	7,684,434.39
Bonds (incl. contra Reacquired Long Term Debt)	287,099,000.00
Advances from affiliated companies	27,652,994.03
Current and Accrued Liabilities	20,268,587.33
Deferred Credits	1,114,345.82

(10) After payment of fixed charges but before payment of any dividends.

Reserves	130,650,690.32
Contributions in aid of construction	170,466.65
Surplus	53,797,481.75
Total	$853,274,450.29

26. Applicant now has the following subsidiaries: (Appl. Exs. 2, 12, 13)

a. San Joaquin—Formerly an electric utility company, now in process of dissolution, 99.9% of the voting securities of which are owned by the Applicant (105, 263, 357-61) (see findings #60-2, 71, 74).

b. Vallejo Electric Light and Power Company—this company is an electric utility company (146-7, 149-52, 266) (see findings #178-80).

c. Valley Electrical Supply Company—An electrical equipment company with assets per books as of June 30, 1940 of $510,399, of which Applicant owns 95% of the voting securities (104, 264).

d. Arlington Properties Company, Ltd.—A real estate company with assets per books as of June 30, 1940 of $538,945 of which Applicant owns all of the voting securities (102, 264).

e. Crystal Lake Company, Ltd., whose principal business is the ownership of lands and water rights (102, 265). All of the capital stock of this company was acquired in January 1939 by Arlington Properties Company, Ltd. for $60,000.

f. Western Canal Company—An irrigation company with assets per books as of June 30, 1940 of $900,582, of which Applicant owns 86.1% of

the voting securities (104, 265) (Appl. Exs. 13, 36h, i).

Applicant and Standard Oil Company of California each own 50% of the voting securities of Standard Pacific Gas Line Incorporated (known as Stan-Pac), which owns and operates a natural gas pipe line from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County. It does not sell any gas. One-half of the capacity of this line is reserved for use by Applicant, the other half by Standard Oil Company of California and its subsidiaries. Stan-Pac's board consists of eight directors, Applicant and Standard Oil Company of California each nominating four members thereof. As of June 30, 1940 this company had book assets of $8,370,483 (Appl. Ex. 12) (103, 266).

All these companies are California corporations. They own no properties nor do they carry on any activities outside of that state (262-7, 949).

The only other securities issued by a public utility or holding company owned by Applicant are certain stocks, bonds, and debentures having a total cost of less than $25,000 which were among the assets of an acquired company (Appl. Ex. 13) (268).

CAPITAL STRUCTURE

27. At the time of the acquisition of the business and properties of acquired companies, the properties of several of such companies were subject to bond mortgages. As of December 31, 1930, the properties of Applicant were subject to 41 issues

of bonds, secured by 37 different bond mortgages. As of June 30, 1940, all of such bonds had been retired and the mortgages securing the same released, with the exception of the First and Refunding Mortgage of Applicant (490), the bonds outstanding thereunder, in the amount of $287,099,000,[11] and $9,032,000 (non-callable) Unifying and Refunding Series "B" 6% Bonds of San Joaquin (Appl. Exs. 38, 39), the payment of which has been assumed by Applicant (491-2).

28. Applicant has recorded all purchased properties on its books at cost to it, except in those instances when directed by the Railroad Commission of California to record acquisitions at the original cost to the company first devoting the properties to a public use; and has recorded the cost of all properties acquired in exchange for stock at the par value of the securities issued therefor (454, 465-6) (Appl. Exs. 46-8) (RR Comm. Ex. 1, pp. 11-5).[12]

29. For the year 1939 Applicant's provision for maintenance was 4.105% of its gross operating revenues and for depreciation 13.988% thereof, or a

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(11) It is stipulated that Applicant's bond indenture on file with the S.E.C. be considered a part of this record (512).

(12) Mr. E. W. Hodges, Comptroller of Applicant, testified that there had been no decreases or increases in the recorded costs of Applicant's physical or intangible assets resulting from a revaluation since 1917 when he became associated with Applicant (454, 465, 507) (RR Comm. Ex. 2, §52b). No securities have been issued in anticipation of excessive revenues from subsidiary companies nor has it shown any inter-company profits (474).

total appropriation for maintenance and depreciation of 18.092%.[13] (Appl. Exs. 34, 35)

30. Applicant's outstanding capital stock as of August 1, 1940 consisted of (Appl. Exs. 2, p. 15, Ex. 29) (492):

6,261,273 shares of common stock of the par value of $25 each,
4,197,659 shares 6% and
1,173,163 shares 5% cumulative preferred stock of the par value of $25 each.

The ownership of these shares is widely distributed.[14] All classes of Applicant's stock are listed on the San Francisco Stock Exchange and Los Angeles Stock Exchange; its common stock is also listed on the New York Stock Exchange (251) (Comm. Ex. 141).

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(13) Until 1919 the amount provided for depreciation was determined on the basis of the judgment of the management as to the amount necessary for that purpose. Subsequent thereto the same has been based upon the estimated life of the property. There has been no change in the policy with respect to provision for maintenance (469-70, 473, 507).

(14) The number of stockholders, resident in and out of California, the number of shares held by such stockholders, and their relative percentages was (App. Exs. 22, 29, 44):

SHARES OF STOCK

	Preferred	%	Common	%	Total	%
In California	3,842,183	71.5	1,725,349	27.6	5,567,532	47.9
OutsideCalif.	1,528,639	28.5	4,535,924	72.4	6,064,563	52.1
	5,370,822	100.0	6,261,273	100.0	11,632,095	100.0

(Footnote Continued on Next Page)

31. Applicant's capitalization for the periods indicated follows: (Appl. Exs. 40, 44) (495-6)

	12-31/19		12-31/29		12-31/39	
Bonds	87,002,406	55.44	207,024,200	50.60	287,345,000	45.64
Preferred Stock	30,049,580	19.15	86,104,682	21.04	134,270,625	21.32
Common Stock	34,004,054	21.67	95,555,313	23.36	156,570,125	24.87
Surplus	5,868,331	3.74	20,458,032	5.00	51,465,607	8.17
Total	156,924,375	100.00	409,142,227	100.00	629,651,357	100.00

32. Holders of common stock and holders of preferred stock have full and equal voting rights (324-8, 493). Each stockholder is entitled to one vote for each share held, and may cumulate his

(Footnote Continued from Preceding Page)
STOCKHOLDERS

	Preferred	%	Common	%	Total	%
In California	47,960	81.1	21,182	57.7	69,142	72.1
Outside Calif.	11,194	18.9	15,555	42.3	26,749	27.9
	59,152	100.0	36,737	100.0	95,891	100.0

58,472 shareholders, owning 4,705,948 shares, reside in the territory served by Applicant. (App. Ex. 29)

The following chart shows the distribution of Applicant's stock as to number of shares held (App. Ex. 21):

Stockholders Owning	5½% Preferred	6% Preferred	Common	Total	% of Holders
1-100 shares	14,924	33,626	31,367	79,917	83.4
101-500 shares	1,889	7,678	4,523	14,090	14.7
500-1000 shares	114	610	426	1,150	1.2
1001-5000 shares	52	260	270	582	.6
Over 5000 shares	9	32	56	97	.1
Total	16,988	42,206	36,642	95,836	100.0

(See findings #24, 38)

votes in elections of directors (324-8, 368). Stockholders' meetings are held annually, at which directors are elected to serve for one year and until their successors are elected or appointed (Appl. Exs. 27, 28) (369-70). A majority of the outstanding shares constitutes a quorum (Appl. Exs. 14, 27, p. 7, Ex. 28).

33. From 1914 to 1932 Applicant sold $76,000,000 par value of preferred stock directly to purchasers without underwriting. The average selling cost was 63-4/10c per $100 par value. Sales were made to 68,668 individuals, the average purchase being $1,100.00 (702-12). Since 1924 Applicant has sold more than $65,000,000 par value of its common stock in the same way (713-4, 1311-5) (Appl. Exs. 37a, b). Of these sales the greater portion have been to residents of Applicant's territory, most of whom are consumers (Appl. Exs. 29, 44), with resultant improvement in public and consumer relationships (718-20). (See fn 52 and finding #165)

APPLICANT'S ORGANIZATION

34. Applicant's office is at 245 Market Street, San Francisco. Here all meetings of the Directors, Executive Committee and stockholders are held. Here all books and records are kept. Applicant's office has always been in San Francisco, and it has never kept or maintained an office outside of California, nor held meetings of its Directors, Executive Committee or stockholders other than in San Francisco (2-4, 9, 347).

35. Applicant now has and for many years last

past has had a Board of Directors, consisting of 15 members. All directors must be stockholders. They are elected to serve for one year and until the election or appointment of their successors. (App. Exs. 14, 27, 28.)

The Board of Directors meets regularly once each month, and with the exception of Directors Fogarty and Freeman, who have never attended a meeting, the directors attend with great regularity (Appl. Exs. 19, 25). At such meetings all matters of importance affecting Applicant are discussed and decided. All Applicant's officers are appointed and subject to removal by the Board (226). No individual or group dominates the Board but there is free and full discussion in which each member expresses his individual view and each director votes in accordance with his own judgment, free of any control (113, 346, 525, 553, 607, 662, 676, 741, 852, 876, 939).[15]

36. The Executive Committee (Appl. Ex. 27) now consists of four Directors[16] and the President ex-officio, who presides at its meetings (285). The present members of the Executive Committee are

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(15) See findings 122, 123.

(16) During Guy C. Earl's incumbency there were five members on the Committee. Mr. Frank Anderson, then President of Bank of California National Association, served from the time the Committee was created until his death on September 17, 1935, with the exception of short periods when he was absent on vacations, on which occasions Mr. McIntosh served in his stead (523). The vacancy caused by Mr. Anderson's death was never filled (App. Ex. 17) (285).

President James B. Black (1068), and Directors C. O. G. Miller (since 1913) (522, 536), Allen L. Chickering (since 1930), Norman B. Livermore (since 1935), and S. H. Palmer (since 1938) (233, 284) (Appl. Ex. 17). The Committee meetings are also attended regularly by P. M. Downing, Vice President and General Manager; John P. Coghlan, Vice President and Assistant to the President; A. E. Wishon, Vice President and Assistant General Manager, and D. H. Foote, Vice President and Secretary-Treasurer, who participate in the discussions, furnish information to the Committee members, as well as give their opinions and advise on pending matters (Appl. Ex. 9). No individual or group dominates the Committee but there is free and full discussion in which each member and the officers in attendance participate (92, 113, 139, 286, 290, 291, 387, 553, 598, 599, 866, 876, 888, 1009, 1136). The members of the Executive Committee are nominated by the President and appointed by the affirmative vote of two thirds of the whole Board of Directors (84) (Appl. Ex. 27). The Executive Committee may, during intervals between sessions of the Board, exercise any of the powers and perform any of the functions and duties of the Board. The Committee meets weekly (Appl. Ex. 19) and acts between meetings of the Board of Directors; it formulates its views and recommendations with respect to the important issues, which are thereafter submitted to the Board of Directors (566, 736, 1135). It also discusses and disposes of many matters, including approval of all salaries in excess of

$300 per month (173, 194, 224, 230, 289, 290, 566, 736, 1135, 2511). There are few absences at meetings of the Executive Committee (Appl. Exs. 19, 25).[15]

37. The present Board of Directors, Executive Committee and principal executives, with their respective periods of service, attendance at meetings, and shares of stock held directly and by family and affiliated interests, are shown in the following table: (272-86) (Appl. Exs. 16-19, 25, 32)

Name and Company Position	Date of Elec. Present Incumbency as Director	Period Service With Co. and Pred. as of 9/30/40	% Meetings Attended (1/1/30-9/30/40 or Since Elec. if Elected After 1/1/30)		Stock Interests
			Directors	Ex. Comm.	
James B. Black President Director Member Ex. Comm.	6/18/30	28 yrs.	(since elec. to Pres.) 100%	94%	1,009 sh.
P. M. Downing Vice President Gen. Manager Director Attends Ex. Comm.	7/17/29	39 yrs.	94%	95%	4,651 sh.
John P. Coghlan Vice President Asst. to Pres. Director Attends Ex. Comm.	8/26/31[17]	34 yrs.	96%	93%	3,240 sh.
A. E. Wishon Vice President Asst. Gen. Mgr. Director Attends Ex. Comm.	10/27/36	31 yrs.	85%	85%	11,970 sh.
D. H. Foote Vice Pres. and Sec'y-Treas. (242) Director Attends Ex. Comm.	4/14/14[18]	37 yrs.	100%	98%	45 sh.
Allen L. Chickering Director Memb. Ex. Comm.	7/20/27		77%	81%	6,432 sh.
W. W. Crocker Director	10/6/37		66%		111,569 sh.
J. F. Fogarty[19] Director	12/18/35		No	One	2,059,670 owned by North American Co.

[17] First elected August 8, 1930.
[18] First elected June 29, 1909.
[19] See finding #101.

Name and Company Position	Date of Elec. Present Incumbency as Director	Period Service With Co. and Pred. as of 9/30/40	% Meetings Attended (1/1/30-9/30/40 or Since Elec. if Elected After 1/1/30)		Stock Interests
			Directors	Ex. Comm.	
Herbert C. Freeman[20] Director	12/16/36		None		2,059,670 owned by North American Co.
Norman B. Livermore Director Member Ex. Comm.	4/13/20[21]		92%	93%	91,581 sh.
Chas. K. McIntosh Director	12/18/35[22]		85%	97%[23]	125,933 sh.
John D. McKee Director	4/14/14		88%		61,049 sh.
C. O. G. Miller Director Member Ex. Comm.	4/9/12		81%	80%	212,855 sh.
Henery D. Nichols Director	3/9/38		90%		103,524 sh.
S. H. Palmer Director Member Ex. Comm.	10/27/36		85%	92%	139,950 sh.

[20] See finding #103.
[21] First elected April 11, 1916.
[22] First Elected February 10, 1926.
[23] While a former member of that Committee (Appl. E:. 17) (see fn 16).

38. All present Directors and principal officers, with the exception of Directors Fogarty and Freeman (who are officers of North American), are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern business or any corporation whose business is not principally conducted in California. During the entire period of Applicant's existence, the members of the Board of Directors, with few exceptions, have been residents of San Francisco and vicinity, and have and do own and represent substantial stock interests in Applicant (13, 242, 272-83, 514, 600-2, 653, 656, 671-3, 724-5, 767-73, 822, 826, 869-70, 889, 891-3, 908, 910, 948-51, 1420, 1587) (Appl. Exs. 16, 32).

39. Many of the present directors were connected with utilities which were merged with Applicant, or its predecessors, and the fathers of four directors (Directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon and W. W. Crocker) were active in the affairs of predecessor companies (25-6, 232, 234, 245, 514-22, 654-5, 771, 952). All of the directors, with the exception of Directors Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood (541-3, 608-14, 659-61, 667, 674-5, 767, 773-5, 872-4, 896, 902-3, 916, 920-1) (Appl. Ex. 3).[24]

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(24) See findings #10-12.

40. The Directors, other than those who are active executives of the Company, and excepting Directors Fogarty and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are Chairmen of the Boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities,[25] and several are officers or trustees of educational or charitable institutions (514-16, 601-2, 654-5, 658-9, 673-4, 768, 823, 869-70, 890-1, 909, 949, 1063).

41. Applicant has had but four presidents: Frank G. Drum served from its incorporation until July 28, 1920, when he resigned because of ill health;[26] W. E. Creed who succeeded Mr. Drum was elected on Drum's recommendation and served until his death, August 6, 1927;[27] A. F. Hockenbeamer, who succeeded Mr. Creed, was elected president on August 16, 1927 (153) and served until his death,

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(25) i.e. Pacific Lighting Co., predecessor of Standard Gas & Electric Co. a large stockholder of Applicant's shares (521), of which C. O. G. Miller is chairman of the board. (Appl. Ex. 20) (Petitioner's comment—this is in error. Pacific Lighting Company, of which C. O. G. Miller is president, is the holder of a large number of shares of Applicant, but it has no connection with Standard Gas & Electric Co.)

(26) Mr. Drum was a San Franciscan. He owned a substantial interest in California Gas & Electric Company and became a large stockholder of Applicant upon its organization. He also represented interests which were heavy investors in its securities (32, 153, 605).

(27) Mr. Creed was a San Francisco attorney.

November 11, 1935 (546)[28] being succeeded by James B. Black, the incumbent, elected November 20, 1935 (Appl. Exs. 16, 18, 32).[29]

42. Throughout its history, Applicant's operations have been under the immediate supervision of an officer designated as Vice President and General Manager. Mr. John A. Britton, President of California Gas & Electric Company when its properties were acquired by Applicant and for many years prior thereto associated with Oakland Gas, Light & Heat Company, occupied this position from the time Applicant commenced business until his death on June 29, 1923. He was succeeded by Mr. F. A. Leach, Jr., who resigned July 1, 1929. Since said date, Mr. P. M. Downing, an employee of the Applicant since its organization, has served as such officer (Appl. Exs. 16, 18, 32) (130).[30]

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(28) Mr. Hockenbeamer had been associated with N. W. Halsey & Co., investment bankers, when it participated in the organization of P. G. & E. He entered the employment of P. G. & E. in 1907 as Vice president, Treasurer and a Director, which positions he occupied until his death. He had no outside interests (33-4, 151, 154, 220-1).

(29) See findings #111-21.

(30) Mr. P. M. Downing came to California about 1878 and has been a resident of the state since; in 1895, after graduating from Stanford University with a degree in electrical engineering, he worked for Tacoma Light & Power Company and later for Market Street Railway Company; in 1897 he became an employee of Blue Lakes Water Company, which was afterwards absorbed by Standard Electric Company of California (13-14); he spent about a year doing construction work for John Mar-

43. Applicant maintains seven Committees in its organization, with membership and functions as follows:

President's Advisory Committee—meets weekly and considers Major questions that come before the management of the company (91, 456).

Engineering Committee—meets irregularly, but frequently—considers important technical matters dealing with the physical operations of the company (91).

Gas Engineering Committee—is similar to the foregoing committee, but it considers problems in the gas department (91).

Research Committee—considers suggestions made by employees relating to improved and more economical operations (91).

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tin & Company on properties which later became part of Applicant's system; in 1901 he managed Colusa Gas & Electric Company. He commenced to work for Applicant immediately after its incorporation and during his continuous employment he has been successively line construction foreman, supervisor of installation of sub-station and power house equipment, superintendent of sub-stations, engineer of operations, Vice President in charge of electric operations, Vice President in charge of electric construction and operation, and Vice President and General Manager and director. He was elected to his present positions in 1927 at the suggestion of Mr. Hockenbeamer. During this period of employment, Mr. Downing has devoted all of his time to Applicant's affairs, never having been interested in any other enterprises (15-16, 113).

For Applicant's personnel organization and chart see its Exs. 9, 16-19.

Appropriations Committee—reviews all estimates covering expenditures for new work or repairs (92, 140).

Employees Welfare Committee—meets about once a month and discusses matters affecting the welfare of Applicant's Employees (90).

Central Safety Committee—suggests ways and means of improving the safety of employees (90).

Mr. Black usually confers with the various committees in the process of formulating Applicant's policies (227).[31]

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(31) (Appl. Ex. 9).

Committee Members	President's Advisory Committee	Engineering Committee	Gas Engineering Committee	Research Committee	Appropriations Committee	Employees Welfare Committee	Central Safety Committee
President	x	xxx	xxx			xx	
Vice Pres. & Gen. Mgr.	xx	x	x			xx	
Vice Pres. & Ass't. to Pres.	xx					xx	xx
Vice Pres. & Asst. Gen. Mgr.	xx	xx	xx			xx	
Chief Engineer	xx	xx	xx	xx	xx	xx	
Vice Pres. and Exec. Eng.	xx	xx	xx	x	x		
Vice Pres. in Chg. of Pub. Rel. & Sales	xx	xx	xx	xx	xx	x	x
Comptroller	xx				xx		
Engineer of Elec. Op.		xx		xx	xx	xx	xx
Engineer of Gas. Op.			xx	xx	xx	xx	xx
Engineer of Gen. Con.		xx	xx			xx	xx
Chief of Div. Hydro-Elec. & Trans. Eng.		xx					
Chief of Div. Elec. Dis.		xx					
Chief of Div. Steam Engineering		xx					
Gen. Sup't. S. F. and East Bay Div.		xx	xx	xx			xx
Mgr. Personnel Dept.						xx	xx
Claims Adjuster						xx	xx
Pres. Pac. Serv. Empl. Ass'n.						xx	
Vice Pres. Pac. Serv. Empl. Ass'n.						xx	
7 Members Pac. Serv. Empl. Ass'n.						xx	

x—indicates Committee Chairmanship
xx—indicates Committee Membership
xxx—indicates Ex-Officio Membership

44. The office of Vice President and Assistant General Manager was created in July 1930 and has since been occupied by Mr. A. Emory Wishon (Appl. Exs. 18, 32) (951-4).[32]

45. Mr. J. P. Coghlan was appointed Assistant to the President on July 12, 1923, and was elected Vice President and Assistant to the President on August 16, 1927 (Appl. Exs. 18, 32) (824-6).[33]

46. Mr. W. G. Vincent, Jr., an employee of Applicant for twenty-eight years, has been Vice Presi-

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(32) Wishon has been a resident of California since 1889. He had become General Manager of the San Joaquin and Midland, after having served in various capacities from the dates of their organization until 1920 when he was made General Manager of both companies. In the Fall of 1925 when North American acquired control of the same, he was elected Vice President and continued as General Manager. He continued as operating head of the subsidiaries of Western Power Corporation until Applicant acquired control of them. Mr. Wishon was elected a Director of Applicant in 1936 (952-4). He severed all relations with and had no further communications with North American on the affairs of these subsidiaries (948, 954-6, 978, 1005). He continued as operating head of the San Joaquin and Midland but moved his office to Applicant's building. He is an officer and director of a number of California companies.

(33) Mr. John P. Coghlan was born in California and has been in Applicant's employ since 1906; at Mr. Hockenbeamer's suggestion, he was elected a a director on April 8, 1930, but resigned in June of that year to create a vacancy to be filled by a representative of North American; on August 26, 1931, he was reelected and has served continuously since that time (822-5).

dent and Executive Engineer since January 24, 1922 (Appl. Ex. 18).

47. Mr. R. E. Fisher, an employee of Applicant for twenty-nine years, has been Vice President in charge of Public Relations and Sales since July 12, 1923 (Appl. Ex. 18).

48. Mr. D. H. Foote has been Vice President, and Secretary since November 22, 1922. He was made Treasurer as well on August 16, 1927 (Appl. Exs. 18, 32) (242-4, 247-8).[34]

49. Mr. E. W. Hodges, an employee of Applicant for twenty-three years, has been Comptroller of Applicant since September 14, 1927 (Appl. Ex. 18) (455, 502).

50. Mr. W. G. B. Euler, an employee of Great Western Power Company of California for twenty years prior to 1930, became an employee of Applicant when it acquired control of Great Western and was appointed Chief Engineer of P. G. & E. on February 1, 1940 (238, 240) (Appl. Ex. 18).

51. Applicant maintains a full staff of officers and employees (95) (Appl. Ex. 27), fully competent to conduct its business in all its phases, including financing, purchasing (94, 1215-6, 1524-5), con-

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(34) Mr. D. H. Foote, has lived in the immediate vicinity of San Francisco for forty years. Prior to 1900 he was Secretary and Treasurer of the Union Trust Company of Philadelphia; in 1903 he entered the employ of California Gas & Electric Corporation; in 1906 he was elected Assistant Secretary of Applicant; the following year he became its Secretary; in 1909 he was elected to the Board; in 1910 was also made Assistant Treasurer; and in 1922 was also elected Vice President.

struction, engineering (95, 136), budgets (192-4, 229-30, 403-4, 574, 747, 1011, 1177-82, 1509-10, 1646), accounting (473, 504, 1174, 1208-10, 1218-9, 1520-2), rates (1070, 1207, 1520), taxes (504, 1207, 1520), valuation, insurance (1210, 1522), franchise (1212), preparation of registration statements, and otherwise, without outside assistance (84 et seq.) (Appl. Ex. 9), and during all times pertinent here, conducted its business without outside assistance, and no such advice or services have ever been furnished to it by North American, or its affiliates, or by Applicant to North American (116, 136, 868, 1209, 1219-20, 1521-2, 1527-30, 1688).[35]

52. There were no changes in operating and financial policies of P. G. & E. following its acquisition of Great Western, San Joaquin and Midland in 1930 (125, 473).

53. There have been no important changes in the organization of Applicant's personnel since the organization shown by Applicant's Exhibit 9 was set up during Mr. Creed's presidency (448).

PROXY MACHINERY

54. The solicitation of proxies is by Applicant's management. The proxy statement is prepared in the office of Applicant. It is customary for the president to designate as attorneys the persons who are the officers, the president, the secretary and the vice president and general manager (171, 235, 317, 320, 849-50, 1067). The nominees for election as

(35) See findings #122-125.

directors are the incumbent members of the board to succeed themselves. In the absence of changes, the procedure is followed by the staff without specific instruction from the president (382-6, 1125). If there is to be a new director, he is selected by the president with advice and approval of the other board members (317-20, 367, 565, 635, 667-8, 734-5, 791, 798, 898, 936-7, 1003, 1124-7, 1477-8, 1604, 1616-8) (Appl. Ex. 26). Nominees for election as representatives of North American have been designated by it. (Comm. Exs. 59-70) (1078, 1126, 1133)

CONSTITUENTS OF WESTERN POWER CORPORATION

55. On March 29, 1930, North American, a New Jersey corporation, was the owner of a majority of the capital stock of Western Power Corporation, having acquired such stock by exchange in the fall of 1925 (964, 1023-4, 1464-70, 1092) (Comm. Ex. 57).

56. Western Power Corporation, a New York corporation, on March 29, 1930, was the owner of a majority of the capital stock of——

> Great Western Power Corporation of California and San Joaquin Light and Power Corporation,

and all of the capital stock of—

> Midland Counties Public Service Corporation (958-63, 989, 991, 1021-2).

These three were all California corporations (1087-90) (Comm. Ex. 54-56) (Appl. Ex. 6).

57. Western Power Corporation had been the owner of said stock of Great Western for many years, and had acquired said stock of San Joaquin and of Midland in the spring of 1925 (954, 960, 989) (Comm. Exs. 31-35).

58. In the early 1900's eastern interests and Mr. E. T. Earl and Mr. Guy C. Earl, Californians, organized an operating utility company under the laws of California which later became Great Western and made it a subsidiary of a corporation organized under the laws of the State of New York, which in 1925 was the Western Power Corporation (1087-9).

59. In 1908 the predecessor of Great Western completed construction of a hydro plant on the Feather River (38). Applicant became its largest customer. Because it could not use all of the output, Great Western began to acquire several small distribution systems in competition with Applicant. At this time there was no State law requiring a certificate of convenience and necessity, so parallel lines, duplicating facilities and other means were used by each competitor to obtain new business in the San Francisco Bay region and in the Central valley of California (38-40, 373, 531, 617, 1032, 1088-90) (Comm. Ex. 42). By March 29, 1930, competitive conditions[36] were such that both com-

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(36) 90% of the gross revenue of Great Western was from territory in which it was in active competition with Applicant (38, 40-2, 617, 974, 1000, 1032-4) (Appl. Ex. 4) (Comm. Exs. 42, 43 pp. 3-4, Ex. 44 p. 1).

panies and the general public recognized the inefficiency and lack of economy resulting therefrom (38-40) (RR Comm. Ex. 1, pp. 20-1).

60. San Joaquin on March 29, 1930, was a public utility company operating in the San Joaquin Valley in California, generating, distributing and selling electric energy in that area (Appl. Ex. 4). The properties of San Joaquin represented a merger and consolidation of a number of public utility properties, one of which had started operations in 1895 (Appl. Ex. 3), together with later construction (954-6, 989). The Midland Company was a similar utility operating principally along the coast from San Luis Obispo to Lompoc (44) (Appl. Ex. 4). Its stock was owned and controlled by the principal stockholders of San Joaquin (954-8, 989).

61. The San Joaquin and Midland were not in competition with Applicant (Appl. Ex. 4) (49), but their operating territory was contiguous to that of Applicant and susceptible of economic tie-ins. A large portion of Applicant's natural gas was produced in the territory served by San Joaquin and Applicant distributed gas in the City of Fresno, in which the former company distributed electrical energy (49-51, 984).

62. After the acquisition of control of San Joaquin by Western Power Corporation in 1925, the San Joaquin and Great Western cooperated in matters of mutual interest. Almost immediately a tie line was built, connecting both companies, thus making available the productive resources of both com-

panies, which resulted in great economies as most of the San Joaquin plants were stream flow plants while those of Great Western had large storage above them (961-3, 1022-3).

NEGOTIATIONS OF P. G. & E. FOR ACQUISITION

63. The acquisition by Applicant of the properties of Great Western had been the subject of discussion as far back as 1906 (45-7, 157, 531, 533, 615). However, approaches which had been made over the years had not resulted in a purchase (Comm. Ex. 44).[37]

64. When Mr. Hockenbeamer became president of P. G. & E. and after North American had acquired control of Western Power Corporation and its subsidiaries, Applicant, by its president, again in the Fall of 1929 initiated negotiations for the purpose of acquiring the properties of the subsidiaries of Western Power (45-7, 121, 531-3, 1114, 1467). In these negotiations North American was represented by a vice president, James B. Black (534), who kept the executive officers of North American constantly advised of the progress (158, 371-2, 533, 559, 1033-5, 1108, 1442-5, 1470) (Comm. Exs. 36-9, 42, 43).[38] Black and Hockenbeamer

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(37) According to Mr. Miller, Applicant had always been desirous of acquiring these properties, the only question was whether it could do so at a proper price (531-3).

(38) Mr. Frank L. Dame, then President of North American, told Mr. Black that he was loathe

started negotiations in September 1929 (Comm. Ex. 36). The negotiations continued for a number of months (Comm. Exs. 40, 41)—Applicant's Executive Committee and its directors being constantly advised of the progress being made (122, 156-8, 371-2, 533-5, 559-60, 681, 731, 776, 786) (Comm. Ex. 50). The introduction of natural gas by Applicant by this time was a factor in deciding North American to make the sale, as it gave Applicant a competitive weapon of which North American was apprehensive (1033-4) (Comm. Exs. 42, 44). Finally, the agreement of March 29, 1940, hereinafter referred to, was made (1027-31) (Comm. Exs. 36-53).[39]

65. The arms length (1114) negotiations did not

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to sell the properties because they had a good future and because he feared that a sale might lead others to believe that they had been acquired merely for trading purposes rather than in accord with the policy of North American of buying properties for development into large economic units (1468). He said, however, that the existent competitive conditions might justify a sale and therefore Mr. Black should go to California to see Mr. Hockenbeamer.

(39) Mr. Fogarty testified that North American caused Western Power Corporation to dispose of its subsidiaries because Applicant was a stronger company with a better credit position. "It seemed to us that the acquisition by Pacific Gas and Electric Company . . . would provide the advantages that would result in elimination of competition and would enhance the possibilities of developing that part of what would be the Pacific Gas and Electric Company's system; and for that reason would be generally in the interest of the public and the companies themselves" (1469).

involve consideration of any proposal other than the exchange of P. G. & E. shares for the shares of the subsidiaries of Western Power Corporation (533, 681-2). North American desired not cash, which would necessitate investment, but such shares as would provide it with an income comparable to the earnings from the subsidiaries, the shares of which were to be acquired by P. G. & E. (1051-3, 1469-70) (Comm. Exs. 37-39, 41, 42, 44, 45, 46, 48). North American was also mindful of a possible income tax liability if it was a cash deal (1469) (Comm. Ex. 43 p. 2).[40]

66. In the course of the negotiations for the purchase by Applicant of North American's California subsidiaries, it was recognized that if the

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(40) Mr. Chickering testified that Mr. Hockenbeamer, being anxious to acquire the properties, was willing to make the deal on the basis of 2,000,000 shares but that he and Mr. Anderson did some calculating and recommended a trade on the basis of 1,700,000 shares after which Mr. Miller suggested an additional 100,000 shares and an offer of 1,800,000 shares was authorized. This difference of opinion temporarily split the Executive Committee for Mr. Elsey and Mr. Hockenbeamer didn't think the deal could be made for 1,800,000 shares, but Messrs. Chickering, Miller and Anderson would not consent to the acquisition at more than they thought was a proper price. Later it was agreed to raise the offer to 1,825,000 shares (533, 681-2, 1052-3). (See Finding #65) Prior to this deal, North American had owned none of Applicant's shares (Appl. Ex. 2 p. 23). These shares, constituting 17.71% of the voting stock, where the ownership of the remainder is widely diffused might constitute control. See Equity Corp. 2 S.E.C. 675. (See Findings #105-108).

proposed transaction was made, North American would become a large stockholder of Applicant (Comm. Ex. 43 p. 6). Applicant's president stated to North American representatives that neither he nor Applicant's directors would agree to any transaction which would jeopardize the control of Applicant by local directors who had developed Applicant's properties over the past 75 or 80 years, but that he had satisfied himself that the transactions would not jeopardize that control (1038). It was realized by North American that if it made the sale, it would be giving up control of its California subsidiaries, but that North American would be in the position merely of an investor (1038, 1106-8, 1443-4, 1608, 1672).

67. North American, through its representative only, gave assurance to Hockenbeamer that it did not desire to acquire control of Applicant, and would not attempt to interfere with the management or policies of Applicant, but would consider itself merely as an investor (537, 630, 682-3, 789, 1037-9, 1106-8, 1443-4, 1608, 1672). This was reported to Applicant's directors. It was only after Mr. Hockenbeamer had advised Applicant's Executive Committee and its Board of Directors of these assurances by North American, that the purchase was authorized, and it would not have been authorized unless such assurances had been given (123-5, 159, 376, 535-8, 560, 597, 615-6, 630, 682-3, 729-31, 777, 787-9, 845, 919, 933-4, 1102-6) (Appl. Exs. 43a, b).

68. In the course of the discussions and prior to the execution of the agreement of March 29, 1930 (Appl. Ex. 6) it was agreed by Mr. Hockenbeamer for Applicant and James B. Black of North American that it would be accorded representation by the election of three persons named by it, as directors, and by one member of the Executive Committee (161-2, 170, 563, 631, 732, 847, 1036, 1102, 1471, 1643) (Appl. Exs. 43A, B). Three directors were agreed upon. This is the number North American would be able to elect by cumulating and voting the shares which it owns.[41] This arrangement was reported to Applicant's board of directors (165, 563, 631, 732, 847). This understanding was not incorporated in the written agreement. (Comm. Ex. 42 p. 4; Ex. 43 p. 5; Ex. 44)

SALE TO P. G. & E.

69. The negotiations culminated in an agreement dated March 29, 1930, between North American and Applicant (Appl. Ex. 6) whereby North American contracted to cause Western Power to sell and deliver to Applicant the following:

300,000 shares of common stock of Great Western
897 shares of prior preferred stock of San Joaquin

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(41) This arrangement would assure the receipt by North American of reports and data available to directors and members of the Executive Committee, and would thereby enable it to express itself on Applicant's General policies (1037, 1079-80). (See Findings #94, 106-8, and fn. 71).

1,462 shares of prior preferred Series A stock of San Joaquin
45,159 shares of preferred Series A stock of San Joaquin
128,867 shares of common stock of San Joaquin
5 shares of preferred stock of Midland
10,000 shares of common stock of Midland
1 share of preferred stock of California Electric Generating Company

and, in addition, to cause Western Power Corporation to cancel the total indebtedness of Great Western, San Joaquin and Midland to it as of January 31, 1930, amounting to $19,180,776.76 (Comm. Ex. 48) in consideration of Applicant issuing and delivering to North American, 1,825,000 full paid shares of common stock of Applicant.[40]

70. After a public hearing (on Application #16,415), the Railroad Commission of the State of California (hereinafter called the Railroad Commision) on May 14, 1930, rendered its decision #22,432 (Appl. Exs. 5, 6), authorizing Applicant to acquire said shares of stock and to issue its own shares in payment therefor, as called for by said agreement of March 29, 1930. Pursuant to said decision, the transactions thereby authorized and provided for in said agreement were consummated on or about June 12, 1930.

THE CONSOLIDATION

71. Applicant's acquisition of the stocks purchased under said agreement was the first steps in the execution of applicant's plan to acquire, and to consolidate with its own, the business and prop-

erties of San Joaquin, Midland, and Great Western, and the subsidiaries of the latter company (hereinafter called the acquired companies), such plan being disclosed in its application to the Railroad Commission, which resulted in said Decision #22,432, approving the same (Appl. Ex. 2, p. 22; Exs. 5, 6) (Railroad Commission Ex. 1, pp. 19-20).

72. Immediately upon the acquisition of said stocks as aforesaid, applicant acquired additional shares of Great Western and San Joaquin and then commenced the work of consolidating the business, personnel, and properties of said acquired companies, to make them an integral part of applicant, and to realize the economies and other advantages resulting therefrom. The offices of the acquired companies were moved to 245 Market Street, San Francisco, applicant's main office, duties of personnel were consolidated where possible, unnecessary personnel was eliminated, the operations of the properties were synchronized, and in every way possible the business and properties of the acquired companies were incorporated into and made a part of applicant, and of its unified operations (48-9, 975, 986, 996) (Comm. Ex. 29, 30).

73. All of this was done by applicant, acting through Paul M. Downing, its Vice President and General Manager, without participation of North American or its subsidiaries in any decision with respect to personnel or otherwise (48-9, 236, 975, 996, 1036). Concurrently all indebtedness, contracts, procedures, arrangements and relationships previously existing between said acquired companies

and North American and its subsidiaries were cancelled and terminated (203, 973, 1287, 1522, 1599, 1666-7),[42] and all North American representatives on the Boards of the acquired companies resigned (1111, 1116) (Appl. Ex. 6, p. 4) (Comm. Exs. 45, 47) so that thereafter the only connection North American had with applicant was that of stockholder (978, 1522, 1643).

74. In further consummation of said plan and pursuant to decisions and orders of the Railroad Commission (Decision #28517 made January 20, 1936, Appl. Ex. 46), as to Great Western and subsidiaries (Decision #31354 dated October 13, 1938, Appl. Ex. 47), as to San Joaquin, and (Decision #31355, dated October 13, 1938, Appl. Ex. 48) as to Midland, Applicant acquired all of the assets of said companies, assumed all the debts, and the companies have since been dissolved, with the exception of San Joaquin, its dissolution being delayed pending determination of the rights of the holders of a small amount of stock (111, 357-9, 949).

75. The acquisition of Great Western, San Joaquin and Midland by applicant rounded out a fully integrated system serving a single geographic and economic area, consisting of the San Francisco Bay area, with the great central valleys tributary thereto and the adjoining coastal areas (1041); it removed the hazards of competition, improved applicant's credit, and constituted a single system economically operated (373, 975, 983-6, 1094).

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(42) (See Findings 77-82.)

76. Subsequent to the 1930 transaction Western Power Corporation's only investment was its holdings of applicant's common stock which upon its dissolution on May 2, 1936 were transferred to North American (1117-18, 1465-1471) (Comm. Exs. 56, 57 and 58).[43] From June 1930 to its dissolution, all of its directors were persons associated with North American with the exception of Mr. H. P. Wilson who with his associates originally controlled Western Power Corporation (Comm. Ex. 57).

NORTH AMERICAN RELATIONSHIP TO ITS SUBSIDIARIES

77. In 1927, after the acquisition of control of Western Power Corporation by North American, and prior to the sale in 1930 to P. G. & E., the Great Western, San Joaquin and Midland companies were placed under a single management (964) subject to the supervision and control of North American (966-9, 992-4, 1022-27, 1434-9) in the same manner as were its other subsidiaries (1439, 1593-99). Great Western and San Joaquin paid North American for such supervision the following sums (973):

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(43) A few shares were distributed to minority shareholders of Western Power. Some additional shares were acquired in 1931 in the exercise of its right to subscribe to a portion of an offering of shares by P. G. & E. (333-5, 486). The issue of other shares by P. G. & E. in exchange with its subsidiaries has reduced the relative holdings of North American (486-9) (Appl. Ex. 30).

		Great Western	San Joaquin and Midland
	1927	$19,394.31	$16,898.00
	1928	26,039.50	24,573.55
	1929	28,192.39	26,624.52
Jan. 1—May 31	1930	17,270.77	16,540.82

78. Such supervision included the following subjects (966-9, 1437-9, 1522, 1996, et seq.):

Construction budgets, automobile operating costs, all operating budgets and estimates (1436-7),[44] cash balance sheets, cash requirements, current rate base report, rate matters (1207, 1520), new business reports, financial and operating reports, personnel reports, repurchase stock reports, standardized statistical reports, tie-line accounts, condensed income and balance sheets, precipitation reports, output report showing the trend, the load and the business, general manager's letter. In addition, it supervised the correspondence of and regularly inspected the properties of its subsidiaries (965-9, 1027, 1434). All financing was arranged by North American in New York (1230, 1435, 1532-4, 1655-7), which also made large cash advances to its California subsidiaries, such advances aggregating over $19,000,000 at the time of their sales to applicant (970, 1434-40).

79. Great Western and San Joaquin also had representatives on committees of subsidiaries of North American including the Rate Committee, New Business Committee, Engineering Committee

(44) North American after approval of these budgets, follows and checks the expenditures thereunder (1510).

(1439), and statistical and comparative information was exchanged with such subsidiaries (970-1). They also were accorded the privileges and benefits of a group purchasing contract arranged by North American for all its subsidiaries (1215-6, 1438, 1524-5), received advice on secretarial (1527), accounting (1521), and tax matters and North American supervision of the preparation of the annual reports (1436-40, 1593-1600), and Registration Statements (1654, 1666-7).

80. The officers of North American have been connected by private wire to those of most of its admitted subsidiaries—this wire never extended to the West Coast (1213).

81. Subsequent to 1935 and until rather recently there were 12 or 14 persons employed by certain subsidiaries of North American occupying offices located on the 18th floor of its building in New York City, which persons performed certain services for their employers (1220-2, 1527-30).

82. North American maintains a Station Advisory Committee composed of engineers employed by its admitted subsidiaries, which meets frequently to discuss and exchange technical engineering information (126, 1214-5, 1439, 1523). Applicant has never had any representation on, nor have any of its employees attended meetings of this committee.[45]

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(45) None of these relationships (Findings 78-82) exists between Applicant and North American (1066-8) (see too Findings 122-143).

P. G. & E. RELATIONS WITH NORTH AMERICAN

83. Pursuant to the oral agreement which was made prior to the agreement of March 29, 1930,[46] James B. Black, a vice president of North American, Guy C. Earl, former President of Great Western, and Edward Gruhl, of North American, were elected directors on June 18, 1930, at the request of North American (539-40, 1040). At the same time Mr. Black was elected a member of the Executive Committee, but was succeeded by Mr. Guy C. Earl on July 9, 1930, who served until his death on June 25, 1935. Mr. Black, during the period from the sale in 1930, until his election as president of Applicant in 1935, attended but four meetings of the Board of Directors of Applicant.[47]

84. North American has been represented on Applicant's Board by the following persons who served for the indicated periods (1423-4) (Appl. Ex. 16) (Comm. Exs. 59-70):

Edwin Gruhl—elected June 18, 1930, died January 22, 1933;

James B. Black—elected June 18, 1930 and served as a representative of North American until his election as President on November 20, 1935;

Guy C. Earl—elected June 18, 1930, died June 25, 1935;

F. L. Dame—elected February 15, 1933, died December 30, 1933;

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(46) See Finding #68.

(47) See Findings #37, 54, 67, 114.

F. W. Doolittle—elected January 17, 1934; resigned November 23, 1936;
Herbert C. Freeman—elected December 16, 1936;
James F. Fogarty—elected December 18, 1935.

85. Mr. Earl also represented North American on Applicant's executive committee from July 9, 1930 to June 25, 1935 (Appl. Ex. 17).[48]

86. Mr. Earl took notes of the proceedings of the Board of Directors and of the Executive Committee, and forwarded them to North American (179, 1136, 1482-4). At his request he was furnished copies of the minutes of the Executive Committee meetings, but not of the Board meetings, which, together with reports available to both (1047) he sent to North American (353, 421). He was in receipt of a salary of $12,000 per annum (1041) from North American, in part for this service but largely in recognition of his long past service as an officer of Great Western (1446-7). While he was a regular attendant at meetings (Appl. Ex. 19) he never expressed any views regarding North American attitude on pending matters (117, 235, 529, 568-70, 609-10, 678-9, 776, 830, 918, 1005, 1048).

87. When Mr. Earl died on June 25, 1935, his place as a director and member of the Executive Committee was not filled by a representative of

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(48) Earl was President of Great Western Power Company of California in 1925 when control of that company was acquired by North American (1005) and was President of Western Power Corporation when Applicant acquired control of its subsidiaries (1445).

North American. No suitable person was suggested and North American did not believe any useful purpose would be served by naming a person who would not be in a position to attend Exexutive Committee meetings (1055, 1123, 1573, 1612). Furthermore, it had been arranged that copies of the minutes and the reports submitted to the Executive Committee would be sent to the Directors named by North American[49]—hence they would be as well informed as if a representative were present (167, 365, 419-22, 732, 1039-40, 1055, 1134, 1137, 1459, 1474-5, 1483, 1488, 1574, 1613, 1622) (Comm. Exs. 5, 8, 11, 15). North American's decision not to ask that Mr. Earl be succeeded by a North American representative was made prior to Mr. Black's election as president and was not due in any way to Mr. Black's election (1123-4, 1476, 1488, 1615, 1622) (Appl. Exs. 16, 18). Since that time North American has had only two representatives on the Board (1123, 1474).

88. Mr. Gruhl (who attended only one meeting in June 1930) was succeeded in turn by F. L. Dame (who attended no meetings) (1123, 1474), F. W. Doolittle (who attended only one meeting, September 21, 1936), and Herbert C. Freeman, presently a director (he has attended no meetings) (1610), in the order named (Appl. Exs. 16, 19). All were officers of North American. After Mr. Black had severed his connections with North American, upon becoming President of Applicant

(49) See Finding #94.

(November 20, 1935), Mr. J. F. Fogarty, President of North American, was on December 18, 1935, elected a director to represent North American on the P. G. & E. board. He has never attended a Directors' meeting (Appl. Ex. 17) (1421). The Directors who have been elected or appointed since Mr. Black became president, other than the representatives of North American, were selected by him without consultation with or advice from North American or its representatives (872, 893, 914, 916, 1479-81, 1592, 1617).

89. None of the persons who were named as Directors or as a member of the Executive Committee at the instance of North American, ever attempted to influence or control the action of Applicant or its Board of Directors or Executive Committee, or ever expressed the view of North American with respect to any pending matter, with the single exception that in September 1933, after the Board of Directors of Applicant had reduced the current dividend rate on common stock of Applicant from 8% per annum to 6%, officers of North American who desired that the current dividend rate be maintained, requested that the action of Applicant's Board of Directors in reducing the dividend be reconsidered, but no such action was taken by the Board of Directors (1045-7, 1448, 1479-80).[50]

90. After Applicant acquired control of the subsidiaries of Western Power Corporation, neither Mr. Downing nor Mr. Wishon reported to repre-

(50) See findings 98, 144, 145.

sentatives of North American concerning the operations of those companies and they had no contacts with them relating to such operations (117). Mr. Earl occasionally asked some member of the North American organization to make a special analysis of certain reports, and sometimes inquired of Hockenbeamer and Wishon about certain things in the reports which were not clear (1005, 1148).

91. At present and in the past, the communications and contacts between North American and its officers and Applicant and its officers have been infrequent and unimportant (113-5, 137, 176-7, 180-1, 189, 504, 573, 641, 669, 677, 745, 828-30, 844, 884, 900, 940, 980-1, 1008, 1011, 1058, 1143, 1147-9, 1159, 1167-8, 1173, 1292, 1453, 1495, 1621, 1625-9, 1638, 1642-3) (Comm. Exs. 6-30, 59-127, 138-40). Occasional calls by officers, at which only general matters were discussed, have taken place from two to several times a year (1496, 1571). Letters have been infrequent (750, 818-9, 857, 978-9, 1601, 1629, 1639) (Comm. Exs. 8, 29, 30) and telephone conversations have been limited to from two to nine calls both ways each year (1146, 1454, 1627). Mr. Black, while a vice president of North American, talked to Mr. Hockenbeamer, president of P. G. & E. several times. Once in 1930 when he made suggestions regarding personnel of the acquired companies (1044) (Comm. Ex 30). Wishon also wrote Gruhl of North American on this subject in April 1930 (978-9) (Comm. Exs. 29, 30). In 1935 Black discussed with Hockenbeamer the relative strength and desirability of including certain underwriting groups in the syndicate the latter was forming

(1247-54) (Comm. Ex. 133).[51] Several times during that year Mr. Hockenbeamer called him and he gave his opinion as to the likely course of the bond market and the prices that P. G. & E. ought to get for its bonds (1045-9, 1072-5, 1244).[52]

92. The relationship between Applicant and North American has not altered since that established in connection with the 1930 transaction (1223, 1530).[53]

93. There was no change in the relationships between Applicant and North American at the time of or in anticipation of the enactment of the Public Utility Holding Company Act of 1935 (1531, 1675).

94. The officers of North American who are directors of Applicant receive periodical reports from Applicant, such reports being in substance the same that have been received pursuant to and since the 1930 sale (Appl. Exs. 5, 33, 45) (Comm. Ex. 108) (352-4, 402, 420-3, 451, 506, 574, 746, 797, 808-20,

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(51) See Finding 154.

(52) As early as June 1914, Hockenbeamer had initiated a successful program for the sale of Applicant's preferred stock to its customers. He was generally recognized as the creator of customer-ownership plan subsequently adopted by other utility companies (702-10, 1541). From 1907 until his death, Mr. Hockenbeamer was primarily responsible for the formulation and execution of Applicant's financial policies and was considered well versed in utility financing. As President he devoted most of his time to matters peraining thereto as distinguished from the operating problems (156, 220-1, 433, 559, 801, 858, 928, 932). (See fn. 28).

(53) See findings 77-82, 120-6.

856, 885, 941, 1010, 1042, 1047, 1079-81, 1116, 1150, 1156-9, 1166-7, 1285-9, 1454, 1487, 1503-4, 1600-1, 1619, 1633). These reports consist of those submitted to the meetings of the Board of Directors and Executive Committee, together with copies of the minutes of such meetings, and in addition a copy of a form of financial report prepared for and sent out to insurance companies, rate schedules filed with California Railroad Commission, statistical statements prepared by P. G. & E. department of vice president and executive engineer and occasional newspaper items and court decisions or orders of the Railroad Commission (191, 199, 337 et seq., 350, 420-3, 451, 698-702, 1080, 1147, 1157, 1166, 1454, 1631).[54] Such reports when received by such

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(54) Applicant sends the following reports to Messrs. Fogarty and/or Freeman:

(a) Weekly—

(1) Cash report, showing collections and disbursements.

(2) Expenditures authorized under G. M. Estimates, submitted to the Executive Committee for approval.

(3) System Generating Report, showing power output system peaks and precipitation data.

(4) Consolidated Operating Report of Natural Gas Division of gas received and gas sent out.

(5) Statement of New Business connected, electric and gas.

(6) Minutes of meetings of Executive Committee. (Comm. Ex. 106)

(b) Monthly—

(7) Customers' Statement showing gain or loss in customers by departments and divisions.

officers of North American are scrutinized and filed (1148, 1454-5, 1503-4, 1601). These reports convey less information than is received by the directors and members of the Executive Committee who are present at such meetings (808-11, 1156, 1159, 1283-7).

95. The local directors of Applicant other than its officers generally do not know what information is furnished North American or Messrs. Fogarty

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(8) Capital Expenditures Statement, showing gross capital expenditures and property retired, work in progress, G. M.'s transferred to plant account, capital expenditure covered by Division Managers Authorizations, and status of purchasing department contracts.

(9) Consolidated income statements in comparative form—month, year to date, and 12 months to date, with supplementary statements showing revenue and expenses by major departments, accounting classifications and geographical divisions.

(10) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data. (Comm. Exs. 27, 28, 90-105, 81-4, 87, 109, 125.)

(11) Minutes of meetings of Board of Difectors (419). (Comm. Exs. 5, 8, 11-2, 15, 17, 71) (Although agreed to send—Comm. Ex. 5, a request for them—Comm. Ex. 8, was not acted upon promptly—Comm. Exs. 9-11).

(12) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers.

and Freeman by Applicant (574, 746, 797, 857, 886, 941, 1011).

96. There is no difference between the information received by North American nor in the other relations with P. G. & E. since Mr. Black became president of Applicant, and those received, or that existing before that time (449, 574, 643, 746, 815, 1532, 1633, 1674).

97. Printer's proofs of the annual report prepared by P. G. & E. staff are sent to all directors of Applicant in advance of publications, for their suggestions, but those received by North American officers are not received enough in advance of the date of publication as to give sufficient time for them to make suggestions (270-2, 394, 812, 905, 1081, 1223, 1458, 1603) (Appl. Ex. 15).

98. Neither North American nor its officers have made any suggestions or recommendations with respect to pending matters under consideration by Applicant, nor have they attempted at any time to influence Applicant's action (1155-6, 1168-70, 1457, 1513, 1519, 1569-70, 1603, 1621, 1640-2, 1669) or the action of any director in any respect (115, 173-4, 345-6, 388-9, 407, 540, 566, 610, 626, 636, 662, 668, 683, 738, 782, 792, 829, 832, 851, 877, 883, 894, 918, 937, 1003, 1044, 1049, 1145, 1603, 1631, 1640, 1669). The only possible exceptions to the above are the following: (a) In 1933, when Applicant reduced its dividend on its common stock;[55] (b) Mr. Freeman suggested that the form of Applicant's annual

(55) See findings 89, 144, 145.

statement might be improved by placing the income statement before the balance sheet instead of after it as had been the custom; and this suggestion was adopted by Mr. Black (904-7, 1081, 1224-7, 1602-3, 1631, 1637) (Comm. Exs. 125, 126); (c) Mr. Freeman once commented that Applicant's cash position appeared low, to which Mr. Black replied that he did not believe it was (1149, 1174) (Comm. Exs. 113-5). (See also Comm. Exs. 110-2)

99. Applicant and its officers have never requested the views, advice, suggestion, or approval of North American or its officers, with respect to any pending matter (195, 447-8, 566, 636, 738, 792, 883, 899, 938, 1004, 1167-8, 1186 1513), nor has Applicant, its officers or directors, ever been advised of North American's views or attitude on any pending matter (173, 178, 345, 407, 530, 540, 566, 612, 626, 662, 737, 783, 830, 877, 894, 918, 937, 1003, 1048, 1060, 1504).

100. The officers of North American do not know any of the officers or directors of Applicant (and vice versa) and there has been no communication between them (527, 775, 796, 806-7, 828, 874.5, 893-4, 917-8, 1421-30, 1590) with the following exceptions:

101. Mr. Fogarty, a resident of Garden City, Long Island, New York, Chairman of the Executive and Finance Committee of North American, and its President from 1934 to 1939, entered its employ in 1902 (1420-1), knows Mr. Black, and is slightly acquainted with Directors Miller (526-7, 567), Chickering and Crocker, (660, 676-7, 1422) whom he has seen briefly on a few occasions (one

in California, others in New York (1432-3) but with whom he has had no discussions respecting Applicant, except in a brief and general way, and except that in 1933 Mr. Miller discussed the dividend reduction with him. In the same way he has met Mr. Downing, Mr. Coghlan (828-9, 844) and Mr. Foote (346, 365-7, 1429-31, 1498). He met Mr. Elsey at the one meeting of the Applicant's Executive Committee which he attended as a guest (1422, 1426-7, 1432). He has known Mr. Wishon from the time North American acquired the Western Power and its subsidiaries, at which time Mr. Wishon was an officer of San Joaquin (990, 981, 1009). He does not know any other officers or directors (1422-32). He owns no beneficial interest in any securities of Applicant (1453).

102. Mr. Shea, a resident of Lotus Valley, Long Island, president of North American, does not know any officer or director of Applicant, except Mr. Black, whom he has known slightly for about a year (1638).

102. Mr. Freeman, a resident of Yonkers, New York, has been vice president, a director and member of the executive and finance committees of North American since 1927. He was formerly a public accountant (1587-8). He has never been in California (1592) and knows none of Applicant's officers or other directors, save Mr. Black, Mr. Fogarty, Mr. Downing, Mr. Coghlan, Mr. Chickering and Mr. Wishon, the latter four of whom he has met in New York only two or three times

(676-7, 1589-91), and with whom he has discussed Applicant's affairs only briefly and in a general way (1628). He owns no beneficial interest in any securities of Applicant (1589).

104. The only directors or principal officers (excepting Directors Fogarty and Freeman) who own or hold any stock or securities of North American or its subsidiaries (112, 224, 244, 530, 556, 603, 620, 657, 690, 722, 770, 826-7, 870, 891, 902, 910, 990), are President Black who owns 100 shares (1069), and except that Directors Crocker (657, 665) and Wishon (990-1) are officers of family corporations which own some North American stock.

105. The dates of stockholders meetings, etc. of P. G. & E. and the number of notices sent out follows (Appl. Exs. 23, 26, 30, 31).[56]

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(56) See fn #14 and Finding #32.

Date	Shares Represented	%	North American Shares Owned	% of Total Outstand. Shares	% of Vote Cast	% of Shares Present Without N.A.	Notices
4/ 8/30	4,666,547	63	.....				One
4/14/31	7,481,065	70	2,075,455	19.21	27.2	50.79	One and a second one to shareholders holding 1000 shs. or over.
6/ 2/31 (Adj. Mtg. of 4/14/31	8,381,494	77.5	2,075,455	19.21	24.3	58.29	Notice of adjourned meeting to those from whom no proxy received.
4/12/32	7,449,414	67.5	2,075,753	18.10	[57]	49.40	One only
4/11/33	7,672,414	66.5	2,077,055	18.04	[57]	48.40	"
4/10/34	7,062,443	61.	2,077,055	18.07	28.9	42.93	"
4/ 9/35	6,705,090[58]	58.3	2,063,465	17.95	30.5	40.05	"
4/14/36	7,376,408	64.1	2,059,736	17.92	27.9	46.18	"
4/13/37	7,399,382	64.3	2,059,736	17.92	27.8	46.38	"
4/12/38	7,420,476	64.5	2,059,670	17.71	27.8	42.79	"
4/11/39	7,551,558	64.9	2,059,670	17.71	27.3	47.19	"
4/ 9/40	7,284,896[59]	62.6	2,059,670	17.71	28.3	44.89	"

[57] Proxies not kept. (367)

[58] Ex. 26 says 6,705, 129 shs.

[59] This represents 51.92% of the 6% First Preferred, 53.59% of the 5½% First Preferred, and 71.5% of the common (Appl. Ex. 31). The number of North American shares represented differs slightly in the exhibits cited and to that extent affects the percentages.

COPY BOUND VERTICALLY

106. The stock owned by North American[60] was represented at all these meetings by the attorneys-in-fact or proxies named by Applicant's management in the usual form of company proxy (305, 1604).[61] They were filed with the management prior to each meeting (Comm. Exs. 16, 59, 60, 62, 67-9). Such management proxies ever since the organization of the company have named as attorneys-in-fact, the three individuals who at the time occupied respectively the offices of President, Vice President and General Manager, and Treasurer (171, 225, 317-21, 849).

107. During said period there would have been more than a majority of stock represented at only two of said meetings (a quorum for the election of directors) if North American had not been represented at such meetings. If North American had not been represented at the remaining meetings, or had withdrawn therefrom, a quorum could probably have been obtained (without the representation of North American) by sending out an additional notice—as an attendance of 75% or more of the stockholders could have been and can be obtained for any stockholders meeting by sending out a second notice (314-7, 330-2). The meetings are well attended (305, 1296).

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(60) Wherever North American is named, it is intended to include therewith all of its subsidiaries and affiliates, and where control or influence is concerned, it is intended to include its officers (see findings #55-7, 62, 69-70, 76).

(61) See Finding #54.

108. The proxies since 1935 (when the proxy regulations of the Securities and Exchange Commission became effective) have named the then incumbent members of the Board of Directors, as the nominees for whom the proxies intended to vote. Applicant has therefore known in advance of each stockholders' meeting that the North American stock would be represented thereat and that its stock would be voted for the incumbent directors.[61]

RELATION WITH OTHER STOCKHOLDERS

109. No other stockholder has or has had representation on Applicant's board (but see Comm. Ex. 42 p. 4). No other stockholder owns as much voting stock as does North American (Appl. Ex. 20).

110. While Mr. Fogarty is acquainted with some of the officers of other corporations which are among the large stockholders of Applicant (Appl. Ex. 20), North American owns no stock in any such companies, and has never discussed or communicated with any of them, or the officers of any of them respecting the business and affairs of Applicant (1300-5, 1499-1502).

APPLICANT'S SELECTION OF JAMES B. BLACK AS PRESIDENT

111. James B. Black, President of Applicant, was born in Illinois, was brought ot California at the age of 12 when his parents moved there to reside and has lived in San Francisco and vicinity ever since, with the exception of the period from 1927 to 1935 when he resided in New York and

(61) See Finding #54.

served as a Vice-President of North American (1019, 1025).

112. He was educated in Oakland and San Francisco schools and at the University of California from which he was graduated in 1912 with the degree of B. S. in Engineering (1019).

113. During his school and college years he worked as a laborer in lumber camps and on construction projects. Upon graduation from college he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western Power Company operating in San Francisco (1020). About 1915, the properties of City Electric Company were taken over by Great Western Power Company of California, successor to Great Western Power Company (1021). Mr. Black successively engaged in sales, sales engineering, and administrative work in the San Francisco division of Great Western. Later he became Division Manager, Assistant General Agent and General Sales Manager, and Acting General Manager. In 1922 he was made Vice President, General Manager and a director of that company. When Western Power Corporation acquired control of San Joaquin and of Midland, Mr. Black became a member of the Boards of these two companies (1022). After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February 1927, when at the time he went to New York City at the invitation of North American he was made Vice President and a direc-

tor of Western Power Corporation (1021, 1024, 1440-2).

114. During the period 1927-1935 he was a Vice-President (but not a Director) of North American (1021, 1024). From 1927 until North American sold its California subsidiaries, one of his important duties was to supervise such subsidiaries (465, 1025, 1027, 1139, 1441, 1484).[62] After the sale, he was elected a Director of P. G. & E. on June 18, 1930 from which time, among his other duties, he looked after North American's stock investment in Applicant, visiting California about once each year, at which times he called on a few friends among the officers and directors of P. G. & E. and discussed company affairs in a general way (120, 178, 545-6, 620-2, 684-5, 779, 830, 1002-3, 1042-3, 1049, 1140) (Comm. Exs. 72-109). During this period he studied the reports and data furnished North American by Applicant. He discussed the 1933 dividend reduction with Mr. Earl and wrote Mr. McKee about it but did not take up the matter with Mr. Hockenbeamer (1045).[63] Black made no requests or suggestions respecting the conduct of Applicant's business or affairs (120, 178, 545, 620, 684, 830, 1002). During this period of five years he attended four directors' meetings and one meeting of the Executive Committee (Appl. Ex. 25).[64] Calls at the North American in New York by Applicant's

(62) See Findings #77-82.

(63) See Findings 144, 145.

(64) See Finding #37.

representatives were of the same character (1044).

115. Mr. Black was elected President of Applicant November 20, 1935 (Appl. Ex. 17) following the unexpected death of Mr. Hockenbeamer on November 11, 1935 (546, 1025, 1490). His selection was entirely the result of the initiative of Mr. C. O. G. Miller and other California directors (120-2, 183-4, 397-8, 546-51, 570-3, 622, 686-90, 721-43, 780-2, 854-5, 1056, 1140, 1448) many of whom had become acquainted with Mr. Black's capabilities prior to 1927 when he was in active charge of Great Western, an aactive competitor of Applicant (117-9, 540-8, 616, 660, 683-4, 778, 829.) Several of these directors were prepared to suggest Black if Miller had not done so (780). The fact that he was a Californian and was familiar with some of Applicant's properties, as well as his wide experience and youth were deemed qualifications (549-50, 622-3, 686-9, 721, 741, 780), and his selection met with the unanimous approval of the Board of Directors (186, 622, 686, 688, 742). Mr. Black was also recommended to Mr. Miller by a number of large stockholders (553).

116. No suggestion of Mr. Black's election was made by anyone in North American, by whom his selection was not anticipated and to whom it was a surprise (183-4, 549, 570-1, 1448-52, 1491-3, 1623).[65] The members of the Applicant's Executive Commit-

(65) In fact Fogarty had indicated to Downing that he thought the latter might be elected (185, 639, 1490).

tee[66] were in accord on his selection, before North American knew anything about it (549, 571, 638-40, 742). Mr. Black had no knowledge that he was being considered for the presidency until after the Executive Committee had decided to invite him to serve and the invitation was likewise a great surprise to him (399, 782, 794-5, 1056-8, 1140-2, 1451). North American was not enthusiastic at his leaving, *at* it was at that time short of executives (1450-1). The fact that Mr. Black was then an officer of North American was not considered by the P. G. & E. directors to be a favorable factor in considering his selection, and he was finally chosen only because they determined to their satisfaction that, if he were elected, he would not be subject to influence by North American (187, 232, 399-400, 572, 622-3, 640-1, 743, 795, 1144, 1169).

117. Prior to his election, it was agreed between the directors and Mr. Black that he would completely sever all relationship with North American and its affiliates (548, 551, 572, 689, 744, 795, 849-55, 1057-7). This he did in November 1935 just prior to his election as Applicant's president (551, 1025, 1058, 1452-3, 1493, 1593).[67] He thereupon moved

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(66) At that time included Directors Miller, Elsey and Chickering (686) (Appl. Ex. 18).

(67) Mr. Black owns 1,000 shares of Applicant's common stock and 9 shares of its preferred stock (1082). He owns 102 shares of the common stock of North American but owns no other securities of that company, its subsidiaries or affiliates (1069). His salary was neither discussed nor agreed upon until he reached San Francisco (742, 1143).

his residence back to California where he has since resided (1025).

118. There was and is no understanding or agreement (between Mr. Black and North American) that Mr. Black would consult with North American, or keep it advised, or in any way act for or in relation to it, after he became president of Applicant, nor is he in any respect the representative of North American (1134, 1138, 1143, 1196-7, 1282, 1290, 1462, 1476, 1488, 1493-5, 1518, 1600, 1615-6, 1622, 1624-5, 1652).

119. Mr. Black, as President and Director of Applicant, has not acted as a representative of North American, nor has he been controlled or influenced by that company, or by any of its officers (624, 922, 1082, 1145, 1169-70). His contacts with such officers (since his resignation from North American in 1935), have been few, consisting of from four to nine telephone calls a year (1146) and infrequent letters. Since his election he has called at North American offices on but two occasions where his conversations were social and general (1058-60). Mr. Fogarty of North American has called on him in San Francisco three times upon which occasions they conversed only on general matters (1061).

120. Mr. Black has never received any request or instructions from North American or its officers, respecting the personnel, business affairs or policies of Applicant (1060, 1081, 1170), and North American has never made any attempt directly or indirectly, to control or influence his action or the management or policies of Applicant (1170, 1292-1457,

1504, 1513, 1517, 1569, 1634). Mr. Black has never sought or received the advice, approval or recommendation of North American or its officers on any personnel (1204, 1431, 1457, 1574), dividend (1196) rate (1017, 1143, 1519), salary (1081), refinancing or other pending matter (1060, 1070, 1175-6, 1180, 1263-4, 1272, 1282).[68]

121. There have been no important changes in the organization or policies of Applicant since Mr. Black became President (125, 402, 449, 573, 643, 746, 1062, 1222-3, 1530-2, 1674-6), or in its banking connections (256, 1069), transfer agents, trustees (261) or registrars (1070), and no substantial changes in the organization of its personnel (448, 1204), nor have there been any changes in the relationship of Applicant and North American since

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(68) He advised Fogarty of the settlement of an important rate case (1453, 1455, 1486, 1514, 1572) (Comm. Ex. 71). He consulted Fogarty and other directors in connection with the 1936 refunding operations and a private sale of securities in 1938 with regard to the strength and the trend of the bond market, probable price and discounts (See finding #153-4) (1175, 1264, 1280, 1283-4, 1456, 1513, 1555). He has discussed (with Fogarty and Freeman) in the nature of a communication of facts to his directors, the instant proceedings and the progress of the Hetch Hetchy situation. (196, 408, 575, 642, 797, 885, 901, 1012, 1175, 1185, 1453, 1496, 1497-8, 1513, 1625-6) (Comm. Ex. 137) (See too Finding #54 re North American representatives on P. G. & E. board) Applicant's other directors do not know the extent of these contacts (189, 401, 573, 669, 745, 856, 885, 901, 940, 1009).

Mr. Black became president, 1062, 1223, 1530-2, 1674-6).[69]

P. G. & E. AN INDEPENDENT OPERATING COMPANY

122. This Board of Directors is composed of a group of very intelligent men of initiative, independence and ability.[70] All business of the P. G. & E. is fully discussed at the meetings of the Board and of the Executive Committee. Everyone present freely expresses his judgment and opinions and is not dominated at all by another (113, 346, 525, 533, 607, 662-3, 676, 741, 852, 876-7, 939, 1461).

123. The relations between the members of the Board, the Executive Committee and the officers are cordial and harmonious (391, 568, 594, 638, 642, 669, 738-40, 853-4, 867, 884, 900, 938).

124. Applicant's management would resent any offer of counsel or advice, although they believe any expression thereof should be fairly considered (190, 389, 402, 553-4, 566, 598, 624, 637, 642, 645, 662-5, 691, 738, 744, 783-4, 792, 839, 852, 877-8, 884, 894, 899, 922, 938, 981, 1003-4, 1082, 1168-70, 1197, 1459-61, 1505-9, 1577-9, 1678).[71]

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(69) See Findings #77-82, 92.

(70) The responses of all the witnesses, officers and directors of the applicant were responsive, comprehensive and frank.

(71) When asked to describe the type of problem which he felt should be submitted to North American as Applicant's largest stockholder before final action was taken thereon Mr. Black answered—"As

125. They unanimously feel that P. G. & E. can best be managed by Westerners for Westerners (190-1, 573, 643, 664, 692, 844, 880, 897, 923, 926-8, 987, 1083, 1293-4, 1669-71).[72]

126. No local director has ever at any time observed anything which indicated that Applicant was controlled, directly or indirectly, by North American or that its management or policies were subject to a controlling influence, directly or indirectly, by that

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a stockholder I don't think that any problem should be considered by it except as it might care to come in our stockholders' meeting and express itself. As directors, the officers of North American Company who are now on our Board, I think, ought to be kept informed as to what is going on. They ought to have the opportunity, if they care to, to come out here and attend Board meetings and express their opinions." (1186) (See too 1650) (See Findings #156-158).

(72) See Findings #34-51, 99.

Mr. Black said: "I think it would be very detrimental to the company, Pacific Gas and Electric Company, if there was any such attempt made, and certainly it would be detrimental if it was successful, which I don't for a moment believe that it would be . . . this is known as the local company, that there is a good deal of local pride in it, and if it became known that it was a company controlled by outside interests, and particularly by a New York holding company, I am sure its position in public esteem would be weakened, and I am sure it would be subject to some political criticism, and they might or might not be serious, but at least they would be harmful; and I think that any attempt to interfere in the operations of the property by anyone who was not here constantly on top of the job would result in inefficiency and loss of morale and would have a generally bad effect." (1293-4).

company (126, 236, 347, 553-4, 624, 662-3, 683, 691, 783, 839, 877, 883, 894, 899, 922, 981, 1082, 1092, 1457-62 1603, 1640, 1669-71).[45]

127. North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting (555, 564-5, 597, 625, 663-4, 692, 784, 840-1, 870, 879, 895, 922-5, 927-8, 982, 1082-3, 1456-63, 1671, 1678, 1682).[73]

128. Neither by absenting itself from stockholders meetings nor by attempting to impose conditions for its participation or voting therein could North American control Applicant or subject its management or policies to a controlling interest, as its absence would not prevent the obtaining of a quorum, or if it did, the incumbent directors would remain in office and any vacancies would be filled by vote of the remaining directors (1457, 1603, 1669, 1682). (Appl. Ex. 27.)

129. The maximum influence that North Ameri-

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(73) Mr. Miller stated: "I assume, of course, that the management of the Pacific Gas and Electric Company would remain proper and would attempt to fulfill its duties. The Board of Directors of the Pacific Gas has representatives of a number of groups of influential people in San Francisco. I think if those groups agreed on any course as being the proper one for the corporation to follow, and the management of the corporation was in accord with that, I think they could stand up against anything." (555) Other directors than the North American directors expressed similar opinions. (See Findings #32, 54, 106-8).

can could exert on the control, management or policies of Applicant, by virtue of its ownership of 17.71% of its stock, would be by participating in stockholders' meetings, and by electing the maximum number of its representatives by cumulative voting of its stock. The maximum effect of such cumulative voting at any stockholders' meeting held since North American became a stockholder, would be the naming of four North American representatives out of a board of fifteen directors (625).[74]

BANKING AND FISCAL AGENCIES

130. Applicant's banking connections, transfer agents, registrars and trustees are predominantly Californian, were all selected before North American became a stockholder and no important changes have been made since that time (249-51, 256-61, 262-8, 355-6, 914-5, 1069-70, 1282). North American has never acted as transfer agent, coupon paying agent, registrar or performed fiscal services of any nature for applicant as it did prior to 1935 for its admitted subsidiaries (1212-3, 1522). Applicant has not had occasion to borrow money from banks for over thirty years (258, 1070).

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(74) The smallest attendance at any stockholders' meeting was that of 58.3% of the stock at the meeting of April 9, 1935. 17.95% of the stock represented at such meeting could elect 4 directors out of 15 by cumulative voting. No stockholder has yet exercised that right (368). (See Findings #54, 106-110, 156)

ABSENCE OF OTHER RELATIONSHIPS

131. There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930 (453, 476, 1062, 1458, 1605).

132. Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant (127, 453, 475-6, 1062, 1458, 1527, 1605, 1668).[75]

133. There has been no exchange of operating information between Applicant and the admitted subsidiaries of North American (126).

134. There have never been any intercompany loans or financial transactions between Applicant and North American or its subsidiaries (127, 348, 1062, 1458, 1604).

135. All of Applicant's major acquisitions and construction projects have been and are decided upon, budgeted and carried out within the P. G. & E. organization and entirely independent of North American at all stages (192-4, 229-30, 404-5, 1011-2, 1177-85, 1509-12, 1646-8).

136. North American's organization has never assisted Applicant in the preparation of any Registration Statements (502, 1217-8, 1654-5).

137. The Secretarial Department of North American under the supervision of its Secretary (1526) has never assisted Applicant in any manner (1218-9, 1527).

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(75) See Findings #81, 51, 82.

PROFESSIONAL EMPLOYEES

138. Applicant and North American do not employ the same accountants (1605), attorneys (1205-7) or engineers (116, 126, 136).[75]

EMPLOYEES

139. Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition (238-40, 1199-1202, 1519). North American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon (1201-4, 1457, 1519).

140. No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other (116, 136, 238-40, 1199, 1200-2, 1204-6, 1519).

141. Applicant maintains a pension plan which all its employees, having a year or more of service are eligible to join (499-500, 825). Mr. Coghlan assisted in the formulation of this plan and had no communication with North American representatives with respect thereto (841) (but see Comm. Ex. 29, par. 2, 4).

POLITICAL CAMPAIGN ACTIVITIES

142. In regard to its expenditures in political activity (defeat of public ownership of utilities)

Applicant has acted independently of North American (1186, 1513).

PROXIES

143. Neither North American nor any of its officers have ever made any suggestion or request or been consulted with respect to the form of proxy, the proxy machinery, or the stockholders' meetings (1067, 1477, 1604). North American never suggested the name of any person to serve on the proxy committee (1477, 1604).[76]

1933 DIVIDEND INCIDENT

144. In 1933 the P. G. & E. earnings had decreased. When the subject of dividend declaration was brought up at the meeting of Applicant's board, and after the usual recommendation, it was moved by a director, in the desire to be "ultra conservative" that the dividend be declared at the rate of 6% per annum instead of the usual 8% (174-6, 199, 410, 610-2, 832, 857). The motion was carried and said reduced dividend paid (201). Upon public announcement of the decision of the board, the directors representing the North American, together with C. O. G. Miller, then in New York (576-7) requested the board to reconsider its action (411, 611, 830, 1045-7, 1447-8, 1505, 1516, 1568-9, 1622, 1653). It never did (412, 611, 738, 793, 857, 1457).[77]

145. North American has never made any suggestions or recommendations, nor has it been asked

(76) See Findings #54, 108.

(77) See Findings #23, 89, 98.

its views, with respect to the dividend policy or the declaration of dividends (174-6, 197-202, 306-9, 452, 578, 610-2, 644, 747-8, 798-9, 831, 858, 885-6, 901, 941-2, 1012-3, 1045-7, 1079, 1194-8, 1447-8, 1515, 1517-8, 1567-9, 1652-3), with the single exception of its request in 1933 that Applicant reconsider its action in reducing the common dividend (1045-7, 1448, 1505, 1568-9, 1622).

FINANCING

146. The following table shows all the securities issued by applicant since its incorporation which were sold to an underwriter or underwriting syndicate and the participations, when known, of each underwriter (Appl. Ex. 42) (Comm. Ex. 141):

Date Sold	Security Sold	Par Value	Underwriters and Participation
1908–1911	Un. & Ref. Mtge. Bonds 5's	$15,074,000	N. W. Halsey & Co.
Jan. 1912	Gen. & Ref. Mtge. Bonds 5's	20,000,000	J. P. Morgan & Co.
Sept. 1912	" " " "	5,000,000	" " "
Mar. 1912	Common Capital Stock	3,000,000	Residue, after stock was offered to stockholders, taken by underwriters: Sutro & Co. 58,500 J. Barth & Co. 58,400
Sept. 1913	6% Gold Notes	4,500,000)	
Dec. 1913	" " "	500,000)	
Mar. 1914	1 Yr. 5% Notes	5,000,000)	Harris, Forbes & Co.
Apr. 1914	" " "	1,922,000)	and
June 1914	" " "	64,000)	N. W. Halsey & Co.
July 1914	" " "	14,000)	
Jan. 1915	1 Yr. 5% Notes	4,000,000	Bond and Goodwin
Mar. 1915	Gen. & Ref. Mtge. Bonds 5's	1,000,000	N. W. Halsey & Co.
Apr. 1915	" " " "	1,000,000	" "
May 1915	" " " "	1,000,000	" "
Nov. 1915	" " " "	52,000	" "
Dec. 1915	" " " "	48,000	" "
Jan. 1916	" " " "	1,900,000	" "

COPY BOUND VERTICALLY

Date Sold	Security Sold	Par Value	Underwriters and Participation
Jan. 1917	Gen. & Ref. Mtge. Bonds 5's	3,060,000	The National City Co.
Dec. 1918	" " " "	3,500,000	" "
July 1919	First Pfd. 6% Capital Stock	5,000,000	Blyth, Witter & Co.
May 1920	5 Yr. 7% Col. Tr. Gold Notes	7,765,000	" "
June 1920	" " " " "	1,621,000	" "
July 1920	" " " " "	614,000	" "
Mar. 1921	1st & Ref. Mtge. Bonds Ser. A 7's	10,000,000	The National City Co.
May 1921	" " " " " "	720,000	" "
Dec. 1921	1st & Ref. Mtge. Bonds Ser. B 6's	10,000,000	" "
Feb. 1922	" " " " " "	10,000,000	" "
Feb. 1923	1st & Ref. Mtge. Bonds Ser. C 5½'s	10,000,000	" "
Oct. 1923	" " " " " "	10,000,000	" "
May 1924	" " " " " "	12,500,000	" "
Sept. 1924	" " " " " "	12,500,000	" "
June 1925	1st & Ref. Mtge. Bonds Ser. D 5½'s	10,000,000	" "
May 1926	" " " " " "	10,000,000	" "
Oct. 1927	1st & Ref. Mtge. Bonds Ser. E 4½'s	15,000,000	" "
Feb. 1928	" " " " " "	20,000,000	" "
Aug. 1930	1st & Ref. Mtge. Bonds Ser. F 4½'s	25,000,000	" "
Jan. 1931	" " " " " "	25,000,000	" "
Apr. 1935	1st & Ref. Mtge. Bonds Ser. G 4's	45,000,000	" "

COPY BOUND VERTICALLY

Underwriters:	Participation
Lazard Freres & Co., Inc.	$9,000,000
Brown Harriman & Co., Inc.	9,000,000
Blyth & Co., Inc.	9,000,000
Edward B. Smith & Co.	4,500,000
The First Boston Corp.	4,500,000
Bonbright & Co., Inc.	2,250,000
H. M. Byllesby & Co., Inc.	2,250,000
Dean Witter & Co.	2,250,000
E. H. Rollins & Sons Inc.	2,250,000

Date Sold	Security Sold	Par Value
July 1935	1st & Ref. Mtge. Bonds Ser. G 4's due 12/1/64	$30,000,000

Underwriters:	Participation
Lazard Freres & Co., Inc.	$6,000,000
Brown Harriman & Co., Inc.	6,000,000
Blyth & Co., Inc.	6,000,000
Edward B. Smith & Co.	2,700,000
The First Boston Corp.	2,700,000
Dean Witter & Co.	2,100,000
Bonbright & Co., Inc.	1,500,000
H. M. Byllesby & Co., Inc.	1,500,000
E. H. Rollins & Sons, Inc.	1,500,000

Date Sold	Security Sold	Par Value
Sept. 1935	1st & Ref. Mtge. Bonds Ser. G 4's due 12/1/64	$20,000,000

Same Underwriters—Same % of Participation.

Mar. 1936	1st & Ref. Mtge. Bonds Ser. H 3¾ due 12/1/61	$90,000,000

Underwriters:	Participation
Blyth & Co., Inc.	$14,000,000
Brown Harriman & Co., Inc.	8,000,000
Edward B. Smith & Co.	8,000,000
The First Boston Corp.	8,000,000
Lazard Freres & Co., Inc.	6,000,000
Dean Witter & Co.	6,000,000

Underwriter:	Participation
Bonbright & Co., Inc.	4,000,000
H. M. Byllesby & Co., Inc.	4,000,000
E. H. Rollins & Sons, Inc.	4,000,000
Bankamerica Company	500,000
Mitchum, Tully & Co.	500,000
Elworthy & Co.	500,000
Wm. Cavalier & Co.	500,000
Brush, Slocumb & Co.	500,000
Schwabacher & Co.	500,000
Dillon, Read & Co.	7,500,000
Kuhn, Loeb & Co.	7,500,000
Morgan Stanley & Co., Inc.	10,000,000

Date Sold	Security Sold	Par Value
Mary 1936	1st & Ref. Mtge. Bonds Ser. H 3¾ due 12/1/61	$30,000,000

Same Underwriters—Approximately the same % Participation, last 3 excluded.

Date Sold	Security Sold	Par Value
Oct. 1936	1st & Ref. Mtge. Bonds Ser. I 3½'s due 6/1/66	$35,000,000

Same Underwriters—Approximately the same % Participation.

Date Sold	Security Sold	Par Value
Sept. 1939	1st & Ref. Mtge. Bonds Ser. H. 3¾'s due 12/1/61	900,000
Mar. 1940	1st & Ref. Mtge. Bonds Ser. H 3¾'s due 12/1/61	360,000
Sept. 1930	1st Ref. Mtge. Bonds Ser. H ¾'s due 12/1/61	850,000
		2,110,000

The aforesaid $2,110,000 principal amount of Series H bonds were sold to Blyth & Co., Inc., who immediately thereafter sold the bonds to the trustee for the sinking fund under the mortgage securing said bonds.

Note: The company has no information concerning persons, if any, other than those listed above who may have partici-

pated in underwritings prior to 1935. The said persons listed are the persons to whom the securities were sold by the company.

147. Applicant has sold no stock issues to underwriters since 1914 with the exception of a $5,000,000 issue sold to Blyth, Witter & Co. in 1919 (712).[78]

148. N. W. Halsey & Co., whose representatives were active in applicant's organization, played a prominent part in its financing prior to 1919. Although Blyth, Witter & Co., a California underwriter and investment banker, headed applicant's business in 1919 and 1920, National City Company, a New York house which Mr. Miller described as a successor to N. W. Halsey & Co., was the principal underwriter for all of applicant's financing between March 1921 and January 1931 (580).[79]

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(78) See findings 33 and footnote 52.

(79) For a time prior to June 1, 1920, Mr. George K. Weeks, National City Company's west coast representative, was a director of applicant (Appl. Ex. 16). His successor as representative of that banking house, but not as a member of applicant's board, was Mr. Stanley Russell (1389). Mr. Miller and other directors thought that National City Company played such an important role in applicant's financing because it was the natural thing to give the business to N. W. Halsey & Co.'s successor, but that the selection of National City Company was "about 94% the selection of Mr. Hockenbeamer (although he considered other solicitations) or his predecessor Mr. Creed" (580-1, 646, 752, 799-801).

149. Blyth & Co., Inc. (a California corporation) or its predecessor, Blyth, Witter & Co.[80] by its President, Charles R. Blyth[81] had for some time been anxious to participate in the underwriting of P. G. & E. financing (211-14, 440, 440-4, 584, 587-92, 649, 757, 803, 862, 944, 1251, 1253, 1263, 1270-2, 1385-8, 1390-99, 1547-52, 1664) (Comm. Ex. 128, 9, 132, 135). He, (some of the members of his organization are also acquainted with P. G. & E. men) has been a close friend for many years of most of applicant's directors and is well known to all of them (207, 440-5, 584, 586-7, 589-92, 648-9, 651-2, 756-7 759,

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(80) This firm purchased a $5,000,000 issue of P. G. & E. 6% 1st Preferred shares in July 1919 and $10,000,000 5-Yr. 7% Collateral Trust gold notes in May, June and July 1920 due in part to Blyth's friendship with Frank Drum, then President of P. G. & E. (1382, 1384).

(81) Blyth has lived in California for thirty-one years and now resides in Burlingame, California, near San Francisco (1380). He is the largest stockholder of Blyth & Co., Inc., (1381). He has been engaged in the investment banking business since 1906. He helped organize a corporation known as Blyth, Witter & Co. in 1914 which was converted into a partnership in 1930. Blyth & Co., Inc. was incorporated in 1933. It or its predecessor has had a New York office for about 15 years. Mr. Charles Mitchell, formerly President of National City Company is Chairman of the Board of Blyth & Co., Inc. Mr. Bernard W. Ford is Vice President and a Director of Blyth & Co., Inc., residing in San Francisco. Mr. Loring R. Hoover is President of the New York Office of Blyth & Co., Inc. Mr. Roy Shurtleff is Vice President and Director of Blyth & Co., Inc., residing in San Francisco (1382-4).

761-2, 802, 860-3, 887, 901-2, 943-5, 1015, 1016, 1284, 1387-8, 1391, 1399-1401, 1553).[82] Blyth & Co. participated in applicant's financing to the extent of 15% to 22½% from 1921-31 (1386). In the financing in 1935 and following, the position of Blyth & Co. has improved (Comm. Ex. 136) (1382-6). In June 1935 it was in second position and participated in the management fee (1251, 1393-5).

150. Applicant's first financing after Mr. Black became President was a $90,000,000 issue in March 1936. The only other public issues by applicant since then were a $30,000,000 issue in May of that year and a $35,000,000 issue in October of the same year. Each of these issues was purchased by an underwriting syndicate headed by Blyth & Co., Inc. (Appl. Ex. 42) (215-22, 554, 446, 589-95, 650-3, 669, 757-66, 803, 862-5, 886-7, 942-7, 1071-4, 1263-81, 1399, 1403-9, 1554-1562, 1664).

151. In January 1936, Mr. Black called Mr. Blyth to his office, told him that applicant was preparing to do some refunding and asked if his firm was in a position to head the syndicate to be formed

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(82) Mr. Miller testified "Blyth & Co. was the largest California house that could very easily do the business, it was a California corporation, I had a son-in-law who was a partner, and the other two partners were very close friends of mine; I think it was a natural thing; Lazard Freres were a California house only 45 years ago, they moved away from San Francisco; there was no reason why they should have the business at the same rate. It was the natural thing to want your friends to have it if the conditions warranted." (592)

in connection therewith (1071, 1273, 1403).[83] Mr. Blyth told him that his firm would be glad to do so and that he was then requested to have his associates get in touch with applicant and start work on the registration statement (1071). Previous to the time he had this conversation with Mr. Blyth, Mr. Chickering was the only director of applicant who had spoken to him about the desirability of Blyth & Co., Inc. heading applicant's underwriting (1072, 1266, 1270, 1558, 1663).[84] Thereafter the following

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(83) He told Blyth that one reason he was choosing his firm was because of the fact that—"they were the leading western house and that he felt that wherever there was a western firm that could contribute to the underwriting group that they should be taken in". The other directors felt the same. (590-92, 804, 863, 945, 1016, 1073, 1662)

(84) See findings 118-120. Shortly after he went to San Francisco, Mr. Chickering told him that Blyth & Co., Inc. should be given an opportunity to see whether or not they could do the job of heading applicant's underwriting syndicates and that he (Mr. Chickering) hoped that he would recommend that firm (757-8). He told Mr. Chickering that he was not then particularly interested in the problem because he had too many other things to look after—"It was a matter that was too far ahead to worry about;" that his reasons for deciding to recommend Blyth & Co. were the same reasons that he had given Mr. Hockenbeamer almost a year before (759, 1072). See finding 154. Black told the Executive Committee or the board or both, that he had decided to let Blyth & Co., Inc. manage the March 1936 syndicate and asked if they had any objections and if they did have he would like to have them determine what his course should be; and that—"not only did they have no objections, but they approved with great enthusiasm what I had

California houses were added to the 1936 syndicates: Bankamerica Company, Mitchum, Tully & Co., Elworthy & Co., Wm. Cavalier & Co., Brush, Slocumb & Co., and Schwabacher & Co. (1073, 1273-4).[85] Blyth & Co. has no commitment for future financing (1085).

152. North American had nothing whatever to do with the selection of Blyth & Co. as underwriter (944-5, 1016, 1263-5, 1272, 1557).

153. There were no agreements or understandings between Black and North American representatives relating to applicant's future financing or who should head or participate in its financing (1263-4, 1272, 1282, 1554-6, 1662). He did discuss in a general way with Mr. Fogarty (as well as other members of the applicant's board of directors), the bond market and conditions in general (1175, 1264, 1275-6, 1281, 1283-4, 1513, 1555, 1562, 1665).[58]

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proposed". (216-7, 444, 590, 804, 863-4, 943, 1074, 1266) They were also well pleased with the results (1281).

(85) With regard to the inclusion of Dillon Read & Co., Kuhn Loeb & Co. and Morgan Stanley & Co., Inc. in the March 1936 syndicate, they were included to add financial strength only and they were so advised as was Blyth 218, 220, 222, 445, 593-5, 651, 763-4, 804-5, 864, 944, 1015, 1274-8, 1403-6, 1559-62, 1664). "I was careful to make it clear to Mr. Blyth that I could see no reason why we should include them in any subsequent financing. It is possible that if we have a very large issue that we might give consideration to include one or all of them again." (1278-9) These three firms were not included in subsequent syndicates (1279, 1408). See finding No. 146.

154. North American has never underwritten any securities issued by applicant, nor participated in any way in its financing. It has not been consulted, nor has it made suggestions as to who should be the underwriters of applicant securities, who should be the members of underwriting syndicates (215, 223, 438, 443, 583, 592, 596, 651, 653, 661-2, 754-5, 762-3, 803, 805-6, 861, 864, 868, 888, 944-6, 1016, 1070-5, 1174-6, 1228-38, 1262-4, 1271-2, 1275-6, 1278, 1280-2, 1284-5, 1392, 1396-7, 1401-3, 1406-7, 1410, 1513, 1534-6, 1538-47, 1557, 1561-3, 1659-64) (Comm. Ex. 131) or participated in any discussions or negotiations relating to any underwriting, except that in 1935, Mr. Black (then with North American) suggested to Mr. Hockenbeamer that Blyth & Co. be given the leadership of a syndicate then being formed because Blyth & Co. was a California house. Mr. Hockenbeamer chose Lazard Freres & Co., Inc. (437, 1072-5, 1242-7, 1251, 1253, 1257-8, 1260-2). All negotiations respecting the issue and sale of applicant's securities have been conducted in San Francisco by the President of applicant directly with the underwriters (207, 210-1, 213, 215-6, 220, 222-4, 433-4, 439, 447, 580, 582-3, 594, 647-8, 661-2, 754-6, 763, 801-2, 859-60, 865, 944, 1242-5, 1248-9, 1264-6, 1273-9, 1283, 1406-9, 1541, 1543, 1551) (Comm. Ex. 130-1, 134).[86]

155. The last financing of the applicant occurred

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(86) Solicitation by prospective underwriters of North American representatives were referred to the applicant's office in San Francisco (Comm. Ex. 128-9, 132, 133).

in February of 1938 when it privately placed bonds in the principal amount of $15,000,000 with five insurance companies and one bank, recommended to the Board or the Executive Committee, or perhaps both, by Mr. Black (767). Blyth & Co., who counselled with Mr. Black on this matter (1409), received a finder's fee in connection with the disposition of these bonds. (222, 446, 595, 669, 1281-2).[87] There is no understanding between Black and Blyth regarding future financing (1409).

ATTITUDE OF NORTH AMERICAN

156. The North American agreed to surrender control over those of its subsidiaries acquired by P. G. & E. (Finding #66, 67). It has not since attempted to exercise any control (1629, 1673) (Findings #88-92). It has been satisfied with the acts of the management of P. G. & E. and the results thereof (1564-6, 1569-70, 1622, 1634, 1673). If it became dissatisfied with either the acts of management or the results of operations, it would exercise such power as its stockholder position would permit, to influence or control the affairs of the P. G. & E. (1106, 1567, 1579, 1635)[88] or sell its in-

(87) See findings 163.

(88) Fogarty said that the primary difference between the position of North American and a small stockholder is—"that the officer of the North American Company being a director of the Pacific Gas and Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by

terest (1671-3). The exercise of such rights would not be effective under present circumstances.[89]

157. If the North American people knew that Mr. Black was about to recommend to the Board certain action which they considered detrimental to the interests of North American—

> "I think we would inquire into the reasons for it first and if we felt that it was not in the interests of the company, we might raise the question and have it brought before the Board or Executive Committee"

by presenting their views to Mr. Black and possibly attending a Board meeting (1505-8, 1565-6).[71]

158. Applicant and The Detroit Edison Company are the only operating utility companies in which North American had ever acquired as much as 17% of the voting securities without seeking to

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the Board and two officers of the North American Company being directors and participating in that capacity as directors, are in a different position from a small stockholder who is not a director." (1582) (1186, 1514, 1648-50) (see findings #122-129).

But Freeman stated: ". . . it seems to me that anything that affects North American as a stockholder he (Black) ought to take up with us as the directors representing North American, but that anything that relates to the management of P. G. & E. as such—if he has got a united Board behind him, he doesn't have to consult with us. If he did consult with us, it would be because he thought we could possibly contribute something in the way of knowledge of the subject, or advice." (1575-6, 1584, 1635, 1648-50) (See, too, Tr. 1514).

(89) See findings #127-9.

supervise or dominate their affairs (1473, 1608) (Comm. Ex. 46).[90]

JURISDICTION OF THE CALIFORNIA RAILROAD COMMISSION

159. The Railroad Commission of the State of California was created by a constitutional amendment adopted October 10, 1911. By the "Public Utilities Act", effective March 23, 1912, that Commission was given power to regulate and control all public utilities, except that incorporated cities and towns, including the City and County of San Francisco, retained the powers over public utilities which they had on March 23, 1912. On August 8, 1915, the rate-fixing powers of the Commission were extended over all public utilities operating in the State (R. R. Comm. Ex. 1, 2).

160. The Commission's powers of regulation and supervision cover all matters relating to public utility rates, rules and regulations, contracts and practices, equipment, facilities, or service; additions to and betterments of plant; methods of manufacture, distribution, transmission, storage or supply; safety and health of employees, patrons, customers and the general public; standards for measurement of quantity, quality, pressure, voltage or other conditions pertaining to the supply of the product, commodity or service furnished, accuracy of meters and appliances for measurements and the testing of such appliances; accounting practices and procedure, in-

(90) See re Detroit Edison Co., S. E. C. Release No. 2208 ('35 Act).

cluding forms of account, records and memoranda to be kept and maintained (R. R. Comm. Ex. 3, for electric companies as of January 1, 1938, Ex. 4, for gas companies as of January 1, 1926, both originally prescribed January 1, 1913, and which are now similar to those prescribed by the Federal Power Commission (463-4)); the exercise of franchise rights and the regulation of competition between utilities by means of certificates of public convenience and necessity; the ascertainment for each purpose specified in the Public Utilities Act of the value of the property of each public utility in the State, and the making of revaluations to ascertain the value of additions, betterments, extensions and new construction; the sale, lease, assignment, mortgage or other disposition or encumbrance of the whole or any part of the property of a public utility necessary or useful in the performance of its duties to the public; the merger or consolidation, directly or indirectly, by a public utility of its properties, or any part thereof, with any other public utility; the purchase, acquisition, taking or holding by one public utility of any part of the capital stock of any other public utility organized and existing under the laws of California; the issuance of stock, stock certificates or other evidences of interest or ownership, and bonds, notes or other evidence of indebtedness; the accounting for the disposition of the proceeds of all sales of securities; the assumption by a public utility of any obligation or liability as guarantor, indorser, surety or otherwise in respect of the securities of any other person, firm, or

corporation; inspection of accounts, books, papers and records; hearing and deciding complaints respecting any act or thing done or omitted to be done by any public utility, including any rule, regulation or charge previously fixed by or for any utility, in violation, or claim to be in violation, of any order or rule of the Commission; to order reparation, with interest from date of collection, on account of an unreasonable, excessive, or discriminatory charge; to require any public utility to file monthly reports of earnings and expenses and periodic or special reports concerning any matter about which the Commission is authorized by law to inquire or to keep itself informed on.

161. Under the provisions of the Public Utilities Act of the State of California, each public utility is required to furnish to the Commission, in such form and detail as the Commission may prescribe, all tabulations, computations and all other information required by it, to carry into effect any of the provisions of the Act, and to make specific answers to all questions submitted by the Commission; also, to deliver to the Commission upon request copies of any and all maps, profiles, contracts, agreements, franchises, reports, books, accounts, papers and records in its possession or in any way relating to its property or in any manner affecting its business, and also a complete inventory of all its property in such form as the Commission may direct.

162. The Commission has supplemented the Act with a number of general orders (456-65, 479, 481) (R. R. Comm. Exs. 1, 2).

163. Applicant has appeared before the Commission in more than 900 formal proceedings, most frequently as an applicant for permission to perform an act which may not be performed without Commission approval, such as rate matters, adequacy of service, extension of facilities, accounts and records, and mergers and consolidation, or in complaint proceedings or investigations (456).

164. Bonds amounting to $470,307,000 (of which $286,705,000 were outstanding on June 30, 1940) were issued by Applicant under authorization of the Commission.[91]

165. Preferred stock amounting to $134,000,000 par value and common stock of $125,000,000 par value (including the stock of Applicant owned by North American and its subsidiaries), all presently outstanding, were issued under authorization of the Commission (478).[92]

166. Applicant has acquired the property of a large number of public utilities pursuant to authorization of the Commission (479-81).[93]

167. The Commission has issued certificates of public convenience and necessity to Applicant, permitting it to exercise about 200 franchises for line extension and construction projects (R. R. Comm. Ex. 1).

168. There are and have been no management,

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(91) See Findings #27, 146 (480-499).

(92) See Findings #25, 28, 30, 33, 69-70.

(93) See Finding #74.

service, sales, construction[94] or other contracts in existence, nor has there been nor is there evidence of control or influence exerted or attempted over Applicant's finances, management or policies to present problems of regulation.

169. Applicant has fully complied with the provisions of the Public Utilities Act of the State of California and the applicable rules, regulations and orders of the Commission promulgated thereunder (463).

170. The statement filed by the Commission comments on the wisdom of the growth of applicant, particularly in its acquisition and consolidation of the properties of the operating subsidiaries of North American, pursuant to Commission orders above referred to, into one physically interconnected and coordinated intrastate operating utility, and concludes:

> "Our object in presenting these observations, as stated at the outset, has been merely to summarize the authority exercised by this state regulatory Commission. They are not presented either to support or controvert the facts alleged in the application herein of Pacific Gas and Electric Company praying for an order of your Honorable Commission declaring it not to be a subsidiary of North American Company. Yet, as also stated in the beginning, we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Elec-

(94) As such terms are defined in Sections 2 (a) (19), (20) and (21) of the Act.

tric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations."

(R. R. Comm. Exs. 1-4)

INFORMATION AVAILABLE

171. Present and prospective investors in Applicant's securities can obtain the information necessary to appraise the financial condition and earning power of applicant.

172. Applicant now keeps and ever since 1913 has kept its accounts in accordance with the uniform system of accounts for gas and electric corporations prescribed from time to time by the California Railroad Commission (463).

173. All reports filed pursuant to the uniform system of accounts are open to the public (R. R. Comm. Exs. 1, 2) (64).

174. Applicant issues a comprehensive annual report containing a balance sheet and profit and loss statement, a copy of which is sent to each stockholder (272-83, 812-14, 904-7, 1081, 1223-27, 1602-3) (Appl. Ex. 15).

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(89) See findings #127-9.

175. Applicant's common stock is listed on the New York Stock Exchange and its common and preferred stocks are listed on the San Francisco and Los Angeles Stock Exchanges (251), and in that connection it files with such Exchanges and the Securities and Exchange Commission all reports required by such Exchanges and by the Securities Exchange Act.

176. It has issued bonds on several occasions since the enactment of the Securities Act in 1933, and in that connection has filed the registration statements required by that Act.

VALLEJO ELECTRIC LIGHT AND POWER COMPANY[1]

177. Applicant has requested an order under Sections 3 (a) (1) and (2) of Title I of the Public Utilities Act of 1935 relating to itself and subsidiary Vallejo.[95]

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(1) Title supplied by Petitioner.

(95) See Findings #1, 2, 3.

"Sec. 3(a). The Commission, * * * by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly in-

178. Vallejo Electric Light and Power Company, a California corporation, with 10,000 authorized and outstanding capital shares having a par value of $10 each, owns and operates an electric distribution system in the City of Vallejo and its vicinity, in California (100, 839); practically all of the electric energy distributed by it is purchased from Applicant (101, 149). It has no funded debt (Appl. Ex. 36(1)). It was organized in 1897 by Mr. K. Casper, the grandfather of Dr. E. J. Casper, its present President (843); in 1929 Applicant purchased 45.83% of the capital stock at a cost of $229, 166.67, from heirs of K. Casper (146-8, 838, 841)

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trastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;"

"Sec 2(a)(7). 'Holding company' means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company * * * unless the Commission, as hereinafter provided, by order declares such company not to be a holding company;"

It is also provided that the Commission may, upon application, declare that a company is not a holding company under clause (a) upon making certain findings as set forth therein.

(Public Utility Act of 1935—Title I—Control of Public-Utility Holding Companies.)!

(Appl. Ex. 13).[96] For the year ending December 31, 1939, Vallejo had book assets of $1,220,251.69 and a net income of $122,323.35 (Appl. Exs. 12 and 36(k)).

179. The five-member board of Vallejo consists of Mr. John P. Coghlan, Vice President and Director of Applicant, and Mr. T. J. Straub, an attorney in Applicant's employ, Dr. E. J. Casper and his sisters, Mrs. Irma Silverstein and Mrs. Mattye Rosenberg. The Casper family owns 54.17% of the capital stock (100, 152, 837-8).

180. Vallejo has been managed by the Casper family throughout its history—first by K. Casper, then by his son, Albert Casper, and now by the latter's son, Dr. E. J. Casper, and Applicant has never participated in its affairs other than as a minority stockholder (100, 150, 786, 838-9, 842-3).[97] Ap-

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(96) Now carried on Applicant's books as an investment.

(97) Coghlan testified "That company is really a family company. Under our minority interest we have little or nothing to do with the policies. We have one stockholders' meeting a year and three or four directors meetings and at the directors' meetingings Dr. Casper usually reports upon earnings and upon business possibilities and sometimes upon rate problems and that is about all. He carries on the company largely in his own way." (838-9) (see Rule U-3A-2 (a) (1) and (2)).

Mr. Black, President of Applicant, testified that the only contacts he had had with Dr. Casper were in an attempt on behalf of Applicant to purchase the capital stock of Vallejo owned by Dr. Casper and his sisters, if Applicant could acquire it "at the right price"; and that he did not participate

plicant renders no supervisory or management services to Vallejo, although at the latter's request P. G. & E. recently did some engineering and construction work on a substation at "practically cost" (151, 1087). Applicant's representatives do not exchange operating information with Vallejo, and its Division Manager in that area has no direct contacts with Dr. Casper (151).

CONCLUSION

181. Considering all facts of record, the Commission should find and conclude:

1. That the Pacific Gas and Electric Company is not a subsidiary of the North American Company, except within the statutory definition of Section 2 (a)(8)(A) of the Public Utility Holding Company Act of 1935;
2. That the North American Company does not have the power to control the Pacific Gas and Electric Company;
3. That the Pacific Gas and Electric Company has never been and is not now controlled, directly or indirectly, by the North American Company;
4. That the management and policies of the Pacific Gas and Electric Company are not subject to the controlling influence, directly or indirectly, of the North American Company,

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in the formulation or consummation of the policies of that company 1086).

Applicant's local directors testified that the problems of Vallejo are not discussed at Applicant's board meetings (371, 557, 627, 666, 728, 786, 931, 987, 997-8).

wherefore it is not necessary or appropriate in the public interest and for the protection of investors or consumers, that the Pacific Gas and Electric Company be subject to obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935;[98]

5. That Applicant is now and ever since January 1, 1912 has been predominantly a public utility company, whose operations as such do not now extend, and never have extended, beyond California;
6. That all of Applicant's public utility assets now are and always have been located entirely within California, and it does not buy or sell electricity outside that State (98, 143);
7. That Applicant, and every subsidiary company thereof which is a public utility company, are predominantly intrastate in character, and carry on their business exclusively in California, in which they are organized (98, 144);
8. That the exemption of Applicant, and every subsidiary company thereof as such, from the provisions of Title I of the Public Utility Act of 1935 would not be detrimental to the

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(98) Any change would be apparent to the Securities and Exchange Commission upon scrutiny of Pacific Gas and Electric Company's proxy solicitation material; 1934 Act, Section 14, and appropriate rules thereunder (1461) (see Findings #54, 106, 108, 127).

public interest or to the interests of investors or consumers.

182. Mr. Troy has advised the trial examiner that he is diligently engaged in the preparation of a brief or argument regarding the public interest, particularly from the point of view of taxpayers and most particularly consumers. He says that his argument will be ready by April 30, 1941, and asks that the Commission wait for this paper before making its decision (see Finding #7).

Counsel for Applicant moved that certain testimony be stricken. Ruling was reserved (159). The motion is denied.

Respectfully submitted,
JOHN G. CLARKSON,
Trial Examiner.

Dated: April 16, 1941.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

Securities and Exchange Commission
Washington

File No. 31-55

Public Utility Holding Company Act of 1935—
Sections 3(a)(1), 3(a)(2), and 2(a)(8).

Holding Company Act

Release No. 2988

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY, ET AL.

FINDINGS AND OPINION OF THE COMMISSION

Exemption of Holding Company or Subsidiary Company Predominantly an Intrastate Public Utility Company

Applicant having applied for exemption as a holding company under Sections 3(a)(1) and (2) of the Public Utility Holding Company Act, exemption granted, the Commission finding that the applicant and every subsidiary company thereof which is a public utility company from which applicant derives, directly or indirectly, any material part of its income are predominantly intrastate in character and carry on their business in a single State in which the applicant and every subsidiary company thereof are organized, and that the applicant is predominantly a public utility company whose operations as such do not extend beyond the State in which it is organized.

DECLARATION OF STATUS

Subsidiary Company

Application having been filed pursuant to Section 2(a)(8) of the Public Utility Holding Company Act for an order declaring applicant not to be a subsidiary company of a specified holding company owning more than 10% of applicant's outstanding voting securities, order denied upon applicant's failure to show that its management and policies are not subject to a controlling influence by such holding company, so as to make it necessary or appropriate in the public interest and for the protection of investors and consumers that applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

APPEARANCES:

Herman Phleger, William B. Bosley, and Robert H. Gerdes, for Pacific Gas and Electric Company.

Ira H. Rowell, for the Railroad Commission of the State of California.

E. M. Calkin, for the Public Utilities Division of the Commission.

Pacific Gas and Electric Company has filed an application pursuant to Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of

1935, for an order exempting it from regulation under the Act as a holding company and, pursuant to Section 2(a)(8) of the Act, for an order declaring it not to be a subsidiary company (as that term is defined in the Act) of The North American Company.[1]

After due notice a hearing was held before a trial examiner. The Railroad Commission of the State of California appeared by its representative to introduce in evidence a memorandum and other documents showing the extent of such Commission's regulation over PG&E, but made no request for formal intervention.

Edward P. E. Troy filed an application to inter-

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(1) The original application was filed by Pacific Gas and Electric Company and Great Western Power Company of California, a subsidiary of Pacific Gas and Electric Company. In a subsequent amendment, however, it was stated that Great Western Power Company of California and its subsidiaries, having wound up their affairs and distributed their assets to Pacific Gas and Electric Company, had been dissolved. The application, insofar as it relates to Great Western Power Company of California and its subsidiaries, will therefore be dismissed.

In this Opinion we shall sometimes refer to the various companies involved in the case as follows:

Pacific Gas and Electric Company.....PG&E or Applicant
The North American Company..North American
Great Western Power Company of California... Great Western
San Joaquin Light and Power Company....San Joaquin
Midland Counties Public Service Company..Midland Counties

vene in the proceeding, representing that he was a taxpayer of the city of San Francisco and a consumer of gas and electricity furnished by applicant. We denied the application without prejudice to the right to renew it at a future date, and ordered that Troy be permitted to participate at the hearing to the extent of introducing evidence and cross-examining witnesses, provided that such evidence and cross-examination were competent, relevant and material to the issues involved.

At the conclusion of the hearing counsel for applicant and counsel for the Public Utilities Division filed requested findings of fact. The trial examiner submitted his advisory report recommending that the application be granted. Counsel for the Public Utilities Division filed exceptions to certain of the trial examiner's findings and conclusions relating to the application under Section 2(a)(8). Briefs were filed and we heard argument.

Applicant claims that it is entitled to an order under Sections 3(a)(1) and 3(a)(2) on the theory that it and each of its subsidiary companies which is a public utility company from which it derives, directly or indirectly, any material part of its income, are entirely intrastate in character and carry on their business entirely in a single state in which they are organized, and that it is predominantly a public utility company whose operations as such do not extend beyond the state in which it is organized.[2]

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(2) Section 3(a) provides in part:

"The Commission, by rules and regulations

North American owns, controls, and holds with power to vote 2,059,670 of applicant's 6,261,273 shares of outstanding common stock, which represents 32.89% of the outstanding common stock and 17.71% of applicant's outstanding voting securities; thus applicant is a subsidiary company of North American within the meaning of Section 2(a)(8)(A) of the Act. Applicant claims, however, that it meets the test prescribed in the last paragraph of Section 2(a)(8) and therefore is entitled to be declared not to be a subsidiary company of North American. It is admitted that applicant is not an intermediary company through which control of

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upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if——

"(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

"(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto; . . . "

another company is exercised; hence the issues before us under Section 2(a)(8) are whether applicant has shown (a) that it is not controlled, directly or indirectly, by North American by any means or device whatsoever and (b) that its management or policies are not subject to a controlling influence, directly or indirectly, by North American so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.[3]

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(3) Section 2(a)(8) provides, in part:

" 'Subsidiary company' of a specified holding company means—

"(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company;

* * * * *

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an

The Applicant and Its Operations—Applicant is predominantly a public utility operating company, incorporated under the laws of California. Its principal business is the production, purchase, transmission, distribution, and sale of electric energy and natural and manufactured gas in northern and central California. Applicant also distributes and sells water in a number of communities, produces and distributes steam in parts of San Francisco and Oakland, and operates a street railway and bus system in Sacramento. Its electrical distribution system extends into 46 of the 58 counties of California and, as of June 30, 1940, it served 909,155 customers in 137 incorporated cities and towns, 235 unincorporated communities, and in extensive rural areas. Its gas distribution system served, as of June 30, 1940, 636,316 customers in 101 incorporated cities and towns, 79 unincorporated communities, and numerous rural areas.

As of June 30, 1940, applicant's total assets were stated on its books at a figure of $791,146,218. Its

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intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies."

gross revenues for 1939 were $107,175,353 and for the first six months of 1940 were $53,089,276.

Applicant owns and operates 47 hydro-electric generating plants and leases and operates 2 additional such plants; it also owns and operates 9 steam electric generating plants. Applicant owns 15 gas generating plants, 6 of which are used to serve communities not connected with natural gas transmission lines and the remaining 9 as standby against interruptions of natural gas service. Natural gas is purchased at the wells from fields located within the State of California and is transported through the company's own pipe line and through a pipe line owned by the Standard Pacific Gas Line, Incorporated, half of the voting stock of which is owned by applicant.

Applicant sells and delivers electric power in California at a point 20 miles from the California-Nevada state line to the Sierra Pacific Power Company, a public utility company distributing electricity in both California and Nevada. Applicant purchases at wholesale electric energy from The California Oregon Power Company, a public utility which generates and sells electric energy in both California and Oregon, the connection being 70 miles below the Oregon-California state line. All the public-utility properties of applicant are located in California, and applicant does not purchase or sell any gas or electricity outside of California or at the state line.

Applicant's subsidiaries include the San Joaquin Light and Power Company, a utility company which

is in the process of liquidation;[4] Standard Pacific Gas Line, Incorporated, which owns a pipe line extending from the Kettleman Hills oil and gas field in Kings County to San Pablo in Contra Costa County, and 50% of whose voting securities are owned by applicant; and Western Canal Company, which owns and operates an irrigation system in Butte and Glen Counties, California, and 85% of whose voting securities are owned by applicant. Applicant also owns 45.8% of the only class of stock of Vallejo Electric Light and Power Company, an operating utility company which is engaged in distributing electricity in the city of Vallejo, California, and which purchases all of its electric energy from applicant.[5]

History of Applicant—PG&E was organized in 1905 by persons associated with N. W. Halsey & Co., an investment banking firm, and by local men associated with California Gas and Electric Company and San Francisco Gas and Electric Com-

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(4) Applicant owns over 99.8% of the stock of this company, all of its properties have been transferred to applicant, and its principal asset is cash in certain banks, which cash is on deposit pending settlement of litigation with a small minority interest.

(5) Applicant also has the following subsidiaries: Arlington Properties Company Ltd. (which owns some real estate), Crystal Lake Company, Ltd. (which owns a ranch in Shasta County, California), both of which are 100% owned by applicant, and Valley Electrical Supply Company (which deals in electric appliances at Fresno and vicinity), 95% of whose voting power is owned by applicant.

pany, both of whose properties it acquired. PG&E at the present time represents the consolidation of over 400 separate companies. Most of these companies were acquired by the exchange of PG&E stock for the securities of the acquired companies, and a later absorption of the properties, although in a few cases the properties were purchased directly.

Great Western Power Company (subsequently Great Western Power Company of California) was organized under the laws of California in 1906; it was from its inception a subsidiary corporation of Western Power Corporation, a New York company. Applicant purchased large amounts of power from Great Western; but, since it could not purchase Great Western's entire output, Great Western entered into competition in the same territory. The testimony indicates that during most of its existence 90% of Great Western's revenues came from territory in which it was in competition with applicant.

Applicant's vice president and general manager, P. M. Downing, testified that several unsuccessful attempts were made to acquire the Great Western properties during the period from 1911 to 1925. James B. Black, a former employee of one of Great Western's subsidiary companies, was vice president and general manager and a director of Great Western from 1922 until 1927. Early in 1925, as the result of negotiations by Black and several Western Power Corporation officers, Western Power Corporation acquired San Joaquin Light and Power

Company and its subsidiary Midland Counties Public Service Company, which companies served an area contiguous to that served by Great Western. In the latter part of 1925, North American acquired control of Western Power Corporation, and thus of its subsidiaries—Great Western, San Joaquin, and Midland Counties. In 1927, Black went to New York as vice president of North American; his principal duties at that time being to keep in touch with and assist the three California subsidiaries. Close contact was maintained between the local operating men and Black.

In September of 1929, A. F. Hockenbeamer, then president of applicant, entered into negotiations with North American for the acquisition of the California subsidiaries. In these negotiations, Black was the principal representative of North American. Following a series of conferences with Black in San Francisco, Hockenbeamer came to New York in January of 1930; and an agreement was reached by which North American was to receive 1,825,000 shares of PG&E common stock in consideration for the transfer of the securities held by Western Power Corporation in Great Western, San Joaquin, and Midland Counties and the cancelation of an open account indebtedness of $19,180,776 owed by the California subsidiaries to Western Power Corporation.

Several of applicant's directors testified that they had been apprehensive of the power that North American would acquire by the ownership of such a large block of securities, but that Hockenbeamer

had told them that North American had given him assurances that it would not interfere with PG&E's management.[6] Black testified that he assured Hock-

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(6) Chickering, then and now one of applicant's directors, testified with respect to the transaction:

"Q. Now, during those discussions and before the transaction was authorized by the Board of Directors, were there any discussions with respect to the position of the North American Company as a stockholder after the transaction was consummated?

A. Yes sir. The first thing that I objected to was the North American domination. I said I was afraid of it and Mr. Hockenbeamer said that he had been assured that there would be no domination, that they simply have an investment position; they wanted to have three members on the Board of Directors but that they would not exercise any domination or attempt to increase their holdings.

* * * * *

Q. What discussion was had in 1929 and 1930 concerning the extent to which it was contemplated that North American might participate in the Applicant's affairs if it acquired a large block of its common stock?

A. Well, naturally all we knew was what Mr. Hockenbeamer told us and I for one, and several other directors, were apprehensive of any holding company acquiring such a large interest and we voiced that apprehension in the meetings of the Executive Committee. Mr. Hockenbeamer told us that the North American Company would take an investment interest only and would not make any effort to control us. He also told us that they would not increase their proportionate ownership in our stock. Whether there was any agreement to that effect or not, I don't know, but we took Mr. Hockenbeamer's word for it.

Q. Would you say that those assurances by

enbeamer that, insofar as he could direct the policy, there would be no interference by North American.[7] It was orally agreed that North American would be entitled to three members on applicant's board of directors and one member on its executive committee. The formal contract was signed in San Francisco on March 29, 1930, the consolidation was approved by the Railroad Commission of California on May 14, 1930,[8] and the actual transfer of securities was made in June of 1930 at Jersey City, New Jersey.

Most of the employees of the acquired companies were retained, some of them in high executive positions which they still hold. Very soon after the acquisition of securities, the properties of the newly acquired subsidiaries were consolidated with those of applicant. By means of an offer of its preferred stock in exchange, applicant acquired the several

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North American were received at the insistence of certain members of the Applicant's Board?

A. Well, I think that all of us felt that way, Miss Calkin. I think even Mr. Hockenbeamer felt that way."

(7) With respect to these assurances, Black testified:

"There was never any time limit put on it. It was just a general understanding between Mr. Hockenbeamer and myself that that would be done. There was nothing ever said about how long it should last or any considerations as to changes if conditions changed in the future."

(8) Decision No. 22432 of the Railroad Commission of the State of California.

million dollars of preferred stock of Great Western and San Joaquin that was still outstanding, with the exception of 353 shares of San Joaquin. Great Western and Midland Counties were dissolved in 1936 and 1939, respectively, but liquidation of San Joaquin is being delayed pending the settlement of litigation with regard to the small minority interest still outstanding.

Applicant's Stockholders—As of August 1, 1940, applicant had outstanding the following securities:

6,261,273 shares of common stock of par value of $25 per share;

4,197,659 shares of 6% cumulative preferred stock of par value of $25 per share;

1,173,163 shares of 5½% cumulative preferred stock of par value of $25 per share;

$277,681,000 of First and Refunding Mortgage Bonds;

$9,032,000 of bonds issued by the San Joaquin Light and Power Company, the payment of which has been assumed by applicant.

Holders of common stock and holders of preferred stock have full and equal voting rights. Each stockholder is entitled to one vote for each share held and may cumulate his votes in the election of directors. Stockholders' meetings are held annually at which directors are elected to serve until the next stockholders' meeting.

North American, as of August 1, 1940, owned 2,059,670 shares of applicant's common stock—which represent 32.89% of the outstanding common stock

and 17.71% of the total voting stock.[9] This investment is carried on the books of North American at a figure in excess of $63,000,000; since 1937 the annual dividends received on this stock have been in excess of $4,000,000 and represent from 20% to 25% of North American's corporate gross income. North American is by far the largest stockholder of applicant, the second largest stockholder being Standard Gas and Electric Company, a New York corporation which owns 200,420 shares of applicant's common stock—which represents 1.72% of the voting power. The next three largest holders are as follows:

Sun Life Assurance Company of Canada—120,198 shares of common stock and 55,000 of preferred stock;

Pacific Lighting Corporation (a California corporation)—131,900 shares of common stock;

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(9) The shares in addition to the 1,825,000 shares obtained in the Western Power transaction were acquired by purchase when applicant made an offering of common stock to existing shareholders in 1931.

The following chart shows North American holdings in PG&E since June 12, 1930.

Date	Total Shares Outstanding (common and preferred)	Shares Owned by North America	Percent of Total Voting Stock
June 12, 1930	9,173,163	1,825,000	19.89
Dec. 31, 1933	11,514,834	2,077,055	18.04
Dec. 31, 1936	11,495,884	2,059,670	17.92
July 31, 1940	11,632,095	2,059,670	17.71

The decrease in the percentage of stock owned by North American is due to the sale of additional shares of preferred stock by applicant.

The American Superpower Corporation (a Delaware corporation)—100,000 shares of common stock.

The remaining shares are represented for the most part by small holdings.

The number of shares of stock held by stockholders resident within and without California and the relative percentages as of August 1, 1940, were as follows:

	Preferred	%	Common	%	Total	%
In California	3,842,183	71.5	1,725,349	27.6	5,567,532	47.9
Outside Calif.	1,528,639	28.5	4,535,924	72.4	6,064,563	52.1
	5,370,822	100.0	6,261,273	100.0	11,632,095	100.0

Under the corporation laws of California, the presence in person or by proxy of the holders of the majority of the shares entitled to vote in any stockholders' meeting constitutes a quorum for the transaction of business, and if a quorum is not present at such meeting, a majority of the shares in attendance may adjourn the meeting, but no other business may be transacted.[10] The record shows that from 1930 until the date of the hearing, at only two meetings, both in 1931, were enough shares in attendance, in addition to the shares held by North American, to constitute a quorum. North American's holdings have represented from 24 percent to

(10) Deering's Civil Code of California (1937) Section 316.

30 percent of the total votes cast at stockholders' meetings.[11]

Applicant's Board of Directors and Chief Executive—Applicant's board of directors has always consisted of 15 members. The executive committee of the board of directors consisted of five members until North American acquired its interest in 1930, at which time the by-laws were amended to provide for six members. At the present time there are again only five members.

The present board of directors consists of five directors who are officers and full-time employees of applicant, eight directors who are prominent San Francisco business men, and two directors who are admittedly representatives of North American.

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(11)

Date of Meeting	Percentage of shares represented in person or by proxy	Percentage of total votes cast by North American	Approximate percentage of voting securities owned by North American at date of meeting	Percentage of total outstanding shares present, exclusive of North American
Apr. 14, 1931	70.0	27.2	19.8	50.2
June 2, 1931	77.5	24.3	19.8	57.7
Apr. 12, 1932	67.5	.....	19.2	48.3
Apr. 11, 1933	66.5	.....	18.1	48.4
Apr. 10, 1934	61.0	28.5	18.0	43.0
Apr. 9, 1935	58.3	30.5	18.1	40.2
Apr. 14, 1936	64.1	27.9	18.0	46.1
Apr. 13, 1937	64.3	27.8	17.9	44.4
Apr. 12, 1938	64.5	27.8	17.9	44.6
Apr. 11, 1939	64.9	27.3	17.7	47.2
Apr. 9, 1940	62.6	28.3	17.7	44.9

No record of individual proxies was kept in 1932 and 1933.

Neither of these two North American representatives is a member of the executive committee.

Pursuant to the oral agreement of 1930 under which North American was to have three directors and one member of the executive committee, James B. Black, then a vice president of North American, Guy C. Earl, who had been president of Great Western, and Edwin Gruhl, then vice president and general manager of North American, were selected as the North American representatives on the applicant's board and they became directors on June 18, 1930. Black was also appointed to the executive committee, but after several weeks Earl replaced him.

Earl was very active as a director and executive committee member, attending substantially all the meetings. At such meetings he took extensive notes which he later sent to Black, along with copies of the minutes of the past executive committee meetings and the various reports that the president gave to executive committee members and directors. For these services Earl received a salary of $12,000 per year from North American; he received no salary from PG&E. One of Black's principal duties for North American during this period was to keep in close touch with applicant's affairs, and although he attended only four meetings of the applicant's board, he was able to do so through Earl's detailed reports and by fairly extensive correspondence with Hockenbeamer. Hockenbeamer sent numerous reports and financial statements along with his letters,

which often gave detailed explanations of applicant's operations.

Gruhl died in 1933 and was succeeded by F. L. Dame, then chairman of the board of directors of North American. Dame died late in 1933; and at Black's suggestion, F. W. Doolittle was appointed to his place as a North American representative. Earl died on June 25, 1935. Black and Freeman (vice president of North American) testified that Black and Hockenbeamer discussed a possible successor to Earl but arrived at no solution, and shortly thereafter Black became applicant's president. No one has since been appointed to carry on the duties formerly performed by Earl. Since the date of Earl's death and the appointment of Black as president of PG&E, North American has had only two directors and has not had a representative on the executive committee. North American's present representatives on applicant's board are J. F. Fogarty, chairman of the executive and finance committees of North American, and H. C. Freeman, vice president of North American.

None of the applicant's other large stockholders has representation on the board, with the possible exception of Pacific Lighting Corporation. C. O. G. Miller, who has been a director and member of the executive committee since 1913, is chairman of the board of Pacific Lighting Corporation, but he is not generally considered a representative of such company.[12]

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(12) Foote, secretary and treasurer of applicant, testified that Miller did not represent Pacific Light-

Applicant's president has always been its chief executive officer. F. G. Drum, one of the original incorporators, was the first president of applicant, serving until 1920, when he retired. He was succeeded by W. E. Creed, who served until his death in 1927. Creed was succeeded, in turn, by A. F. Hockenbeamer, who had been with the company since 1907, having come to San Francisco as a representative of N. W. Halsey & Co., the investment bankers who financed applicant in the earlier part of its history. Hockenbeamer, who had handled applicant's financing since early in Drum's administration and who had conducted the negotiations with Black leading to the acquisition of the Western Power Corporation subsidiaries in 1930, died unexpectedly in November of 1935, following a short illness. Since November 20, 1935, applicant's president has been James B. Black, formerly the vice president of North American whose job it was to keep close watch over North American's interest in applicant.

Miller and Chickering's testimony in respect of the election of Black was in substance as follows: The only members of the executive committee at the time were Miller, Chickering, and Elsey. After two informal meetings, they decided to recommend that the directors elect Black as president of PG&E. The non-officer directors held several private conferences and agreed to vote for Black. Miller called

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ing Corporation, but Downing, applicant's vice-president and general manager, testified that Miller did represent such company.

Fogarty (Black's superior at North American) to get his permission to approach Black, and then called Black to ask whether Black would accept the presidency if the board elected him. At Chickering's insistence, Miller called again to ask whether Black would sever his relations with North American, and Black assured him that he would. The board then unanimously elected Black. Fogarty testified that upon Miller's first call, he told Miller he would think the matter over but that North American would hate to lose Black because Black was one of their senior executives; and that upon a second call the following day, he told Miller North American did not feel it should stand in Black's way.[13] According to the testimony of several of applicant's directors, they selected Black because he was a comparatively young man, a Californian who was familiar with the Great Western properties as both an operating man and an executive, and because his experience in New York had given him excellent training in utility financing.

Since he has been president, Black has nominated as directors five local men and two representatives of North American. Before he left for San Francisco he suggested that Fogarty become a director.

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(13) Fogarty testified that prior to these calls he had had a conversation with Downing of PG&E in which he told Downing that, since he was the No. 2 man in applicant's organization, he (Fogarty) assumed that Downing would be its next president and added that "if that were so, the North American Company as a stockholder would feel quite satisfied."

Following Doolittle's resignation in 1936, he nominated Freeman at Fogarty's request. Black and Fogarty testified that Black did not discuss with North American whom he would nominate as local directors. McIntosh, who was elected December 18, 1935, had previously served in the place of Anderson, one of the senior members of the board, on several occasions when Anderson had taken extensive trips. Wishon, who was elected in October of 1936, had been president of San Joaquin Light and Power Company and was appointed vice president and assistant general manager of applicant following the consolidation. William W. Crocker, who was elected in October of 1937, succeeded to a vacancy left by his father. Silas H. Palmer, elected in November of 1936, and Henry D. Nichols, elected in March of 1938, are prominent local business men.

Proxy Committee—It has been customary for the president to nominate as the proxy committee the directors who are the president, the vice president and general manager, and the secretary and treasurer; his recommendations have always been followed by the board. It has also been customary for the proxy committee to seek the election of the incumbent directors, including the North American representatives. When Black was with North American, he usually wrote Hockenbeamer each year requesting that the current North American representatives be reelected. More recently, however, no such requests have been made but applicant's proxy committee has included the incumbent North American representatives in its proxy, the

assumption being that North American would communicate any desire to have the personnel of their representation changed. North American has always forwarded its proxy to the management's proxy committee.[14]

Applicant's Financing—Throughout its corporate existence, applicant's only sales of stock issues to underwriting syndicates were part of a $3,000,000 common stock issue in 1912, and a $5,000,000 6% preferred stock issue in 1919 which was sold to Blyth, Witter & Co. Applicant has sold preferred stock of approximately $76,000,000 par value and common stock of $65,000,000 par value without the assistance of banking firms or underwriters. Hockenbeamer was the dominant figure in applicant's financing from 1906 until his death.

With the exception of two issues purchased by J. P. Morgan & Co. in 1912, N. W. Halsey & Co. was the underwriter for all of the bond issues of applicant until Halsey & Co. went out of business in 1916. From 1916 until January 1931 National City Company, which was represented by Stanley Russell, a close personal friend of Hockenbeamer, headed the syndicate for all of applicant's bond issues. Applicant's next public sale after 1931 was a $45,000,000 bond issue sold in April 1935 to a syndicate headed by Lazard Freres & Co., Inc., in

(14) Freeman testified that he looks over the proxy to see that North American's representatives are included in the slate proposed as directors and to see whether any changes have been made with rspect to the other directors.

which Brown Harriman & Co., Inc., and Blyth & Co., Inc., had second and third positions, respectively. Black testified that Hockenbeamer had called him several times with respect to this financing, requesting his opinion on the relative position and financial strength of a number of recently formed banking firms and seeking information about bond prices. He further testified that he had recommended to Hockenbeamer that Blyth & Co., Inc., head the syndicate but that Hockenbeamer chose Lazard Freres & Co., Inc., because Stanley Russell had, in the meantime, gone over to that firm as its president. The directors approved the choice. Representatives of several investment banking houses had approached Black, then vice president of North American, in an endeavor to get Black's assistance in obtaining either the leadership of or a participation in this financing; however, Black stated that he merely relayed the information to Hockenbeamer. Lazard Freres & Co., Inc., also headed the syndicate for two subsequent bond issues, $35,000,000 in June 1935 and $20,000,000 in September, 1935, Blyth & Co., Inc., having second position on the west coast and a participation in the management fee.

The first financing after Black became president was a $90,000,000 bond issue in March 1936, the syndicate for which was headed by Blyth & Co., Inc. Both Chickering and Black testified that shortly after Black was elected, Chickering expressed dissatisfaction with the way Lazard Freres & Co., Inc., had handled the previous issues and sug-

gested that Blyth & Co., Inc., be given an opportunity to head the next financing; that Black had replied that he was not particularly interested in the problem of financing at that time because of other pressing problems, but that early in 1936, Black advised the board that he had decided to select Blyth & Co., Inc., to lead the syndicate; and that the board unanimously approved the proposal. Dillon, Read & Co. and Kuhn, Loeb & Co. each had a $7,500,000 participation, and Morgan Stanley & Co., Inc., a $10,000,000 participation. Black and Blyth both testified that these investment banking firms were included because of the large size of the issue and that it was understood that this would not give them an interest in future issues. They did not participate in the next two bond issues, $30,000,000 in May 1936 and $35,000,000 in October 1936. Fogarty of North American denied that he suggested their inclusion in the March issue when Black had called him several times to get his opinion as to the status of the bond market. Applicant's latest financing was a sale of $15,000,000 of bonds to five insurance companies and one bank. Black called Fogarty to get his advice as to what discount he would have to give to interest the prospective purchasers.

Reports to North American—Applicant regularly sends to North American a variety of detailed weekly and monthly reports. After Earl's death Hockenbeamer instructed Foote, applicant's secretary, to send North American the same reports and documents Earl had sent; and, as has been seen,

Hockenbeamer himself sent numerous reports, frequently accompanied by detailed letters of explanation.

The following reports which are given to members of the executive committee are also sent weekly to Fogarty or Freeman:

(1) Cash reports showing collections and disbursements;

(2) Expenditures authorized under general manager estimates submitted to the executive committee for approval;

(3) System generating report showing power output, system peaks and precipitation data;

(4) Consolidating operating report of the Natural Gas Division of gas received and gas sent out;

(5) Statement of new business connected, electric and gas;

(6) Minutes of meetings of the executive committee.

The following reports, copies of which are furnished to the members of the executive committee, are sent monthly to Fogarty or Freeman:

(7) Customers' statement showing gain or loss in customers by departments and divisions;

(8) Capital expenditures statement showing gross capital expenditures and property retired, work in progress, general manager estimates transferred to plant account, capital expenditures covered by division managers' authorization, and status of purchasing department contracts;

(9) Consolidated income statements in compara-

tive form—month, year to date, and 12 months to date, with supplementary statement showing revenue and expenses by major departments, accounting classifications, and geographical divisions;

(10) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

The following reports which are not received by directors or members of the executive committee are also sent to Fogarty or Freeman:

(11) Minutes of meetings of the board of directors;

(12) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers;

(13) Copies of gas and electric rate schedules, revised from time to time by the filing of new schedules with the California Railroad Commission;

(14) Copies of "Report for Insurance Companies" prepared annually and sent to large insurance companies and other institutional investors;

(15) Statistical statements prepared by the Department of Vice President and Executive Engineer;

(16) Rate schedules filed with the California Railroad Commission;

(17) Court decisions and orders of the Railroad Commission of interest to PG&E.

North American has never requested any information from applicant which has been refused to it.

Other Relationships with North American—

(a) Telephone calls and personal visits—Black and Fogarty testified that they have not had more than four to nine long distance telephone conversations each year. Black does call occasionally, however, to advise Fogarty of contemplated rate reductions and bond refundings. For example, on one occasion Black called to get Fogarty's opinion as to the advisability of making a proposed rate settlement that involved several million dollars, and on various other occasions Black has called to get Fogarty's opinion on the condition of the bond market.[15] Black has been in New York twice since 1935, and Fogarty has been in San Francisco four times. Black testified that they discussed applicant's affairs in a general way in each of these occasions. Several of the other PG&E directors have visited the North American offices on occasional trips to New York; these visits were characterized as being of a social nature.

(b) Service contracts—Applicant has no service contracts with North American and does not as a routine matter receive advice on rates, accounting, engineering, tax matters, sales, depreciation, personnel, and other similar operating matters. It does not participate in North American's group purchasing arrangements and there have been no monetary loans between the companies.

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(15) This practice of asking North American's advice in connection with proposed financing was also followed by Hockenbeamer in telephone conversations with Black when the latter was associated with North American.

(c) The 1933 dividend incident—Evidence has been offered with respect to only one occasion when North American's wishes on a particular matter appear to have been contrary to the action of applicant's directors. In 1933, Hockenbeamer recommended the regular $.50 per share common stock dividend for the third quarter, but the directors voted to reduce the dividend to $.37½ because of a decreased trend in earnings. Black and Miller, who were in New York at the time, wired McKee, one of the local directors, and Dame called Hockenbeamer by long distance telephone to ask that the matter be reconsidered, if possible. Although the matter was not reconsidered, the record does not reveal that any further attempt was made to get such reconsideration. In the fall of 1936 Black recommended the restoration of the $.50 per share dividend. He testified that the earnings justified the restoration and denied that North American requested the action.

Conclusions with Respect to the Application under Sections 3(a)(1) and (2)—On the basis of the record before us, we find that applicant and all of its subsidiary companies are predominantly intra-state in character and carry on their business in California, the State in which each of them is organized, and that applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California. Since we make no finding that the exemption of applicant from regulation under the Act as a holding company will be detrimental to the public interest or the interest of

investors or consumers, the application under Sections 3(a)(1) and (2) will be granted.

Conclusions with Respect to the Application under Section 2(a)(8)—We hold that the application under Section 2(a)(8) cannot be granted. There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a)(8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner. Our reasons for this decision are as follows:

First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of demonstrating that its management and policies are not subject to the controlling influence of North American.[16] We do not understand applicant to dispute this.

Second, it seems apparent from a reading of Section 2(a)(8) that by the use of the term "controlling influence," Congress meant something less in the form of influence on the management or poli-

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(16) The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730, 739 (C.C.A. 6th, 1941); The Detroit Edison Company, 7 S.E.C. 968 (1940); Paul Smith's Electric Light and Power and Railroad Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2854; American Gas and Electric Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2749.

cies of a company than "control" of such company. We have so held in a long line of cases.[17]

Third, to prove an absence of control or controlling influence, the applicant must do more than show that the holding company has not actively interfered with the local management in the past, for, as we understand the language of Section 2(a)(8), "control" includes the power to control, and "subject to a controlling influence" includes susceptibility to domination. Rochester Telephone Corporation v. United States, 307 U. S. 125 (1939); The Hartford Gas Company, 8 S.E.C. —— (1941), Holding Company Act Release No. 2613; The Detroit Edison Company, 7 S.E.C. 968 (1940). In the latter case we said (7 S.E.C. at 969):

"But whether the holding company has exercised control or effectively exerted influence is, upon application such as this, material only insofar as such circumstances may evidence the existence in the holding company of the ultimate directory power. Inaction on the part of a holding company does not necessarily negate the existence of control or controlling influences. It may only evidence satisfaction with the manner in which a subsidiary is being operated. A subsidiary company, moreover, does not cease to be such merely because it has been given the opportunity to build up an able and self-contained management. The problem is one of fundamentals and not superficialities for, as we under-

(17) See, e. g., H. M. Byllesby & Company, 6 S.E.C. 639 (1940); American Gas and Electric Company, supra.

stand the statutory language, 'control' embraces the power to control and 'subject to a controlling influence' includes susceptibility to domination (Rochester Telephone Corporation v. United States, supra). Consequently, our inquiry must look not merely to the personalities of the managers but primarily to the factors underlying the existence and continuation of the management."

In the Hartford Gas case, we said (Holding Company Act Release No. 2613 at p. 8):

"To satisfy condition (iii) the applicant must show that nothing in the course of relationships between the specified holding company and itself would suffice to make its management or policies 'subject to a controlling influence, directly or indirectly by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed' in the Act 'upon subsidiary companies of holding companies.' The phrase 'subject to', which we have emphasized, clearly does not imply continuous exertion of controlling influence by the holding company over the operating company. Thus we have pointed out that even where there is complete inaction on the part of the holding company, that fact, in itself, 'does not necessarily negate the existence of control or controlling influences'. The Detroit Edison Company, 7 S.E.C. 968 (1940)."

The opinion of the Circuit Court of Appeals for the Sixth Circuit in The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730, is of particular relevance and importance, for the issue in that case is precisely the same as that involved here and the facts are strikingly similar. It is interesting to note that Freeman testified in the hearing on the present application that The Detroit Edison Company and the applicant were the only companies of which North American had ever owned as much as 17% of the voting securities whose policies and management it had not admittedly controlled.

The facts of the Detroit Edison case are as follows: The Detroit Edison Company filed an application with this Commission for an order declaring it not to be a subsidiary of North American, which owned 19.28% of its voting stock, and of the United Light and Power Company, which owned 20.27% of its voting stock. The record revealed a close historical relationship between Detroit Edison and North American and showed that many of the officers and directors on Detroit Edison's board had had some past relationship with North American. It also appeared, however, that Detroit Edison was a strong, successful, and well-managed institution, and that its executive officers devoted all their time to the affairs of the company and at the time of the hearing had no official connection with North American. With respect to United Light and Power Company, the record showed that on numerous occasions its requests for representation on the De-

troit Edison board had been refused and that it had made several unsuccessful attempts to force recognition by attempting to break a quorum. We held that Detroit Edison had failed to sustain its burden of proof and that the record did not justify an order declaring it not to be a subsidiary of North American; with respect to its relationship to United Light and Power Company, we held that Detroit Edison had demonstrated that it was not subject to a controlling influence and, in that respect, we granted its application.[18]

Detroit Edison appealed to the Circuit Court of Appeals for the Sixth Circuit from that portion of our order denying its application. In affirming our order, the Court issued a carefully reasoned opinion discussing the meaning of Section 2(a)(8). This opinion merits quotation at length. Speaking through Judge Hamilton, the Court said:[19]

"At the time of the enactment of the present statute, it was recognized by the Congress that the holding company was the most effective device theretofore used for combining, under single control and management, the properties of two or more hitherto independent corporations and it is also recognized that such companies were largely exempt from state regulation, because in many cases, they extended their activities beyond the jurisdiction of any one state. It also recognized the separation of ownership of property represented by securities emitted

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(18) 7 S.E.C. 968 (1940).

(19) 119 F. (2d) 730, 738-739.

by corporations or trustees, from any direct accountability whatever for its prudent and efficient management. It also recognized that underlying public utility corporations were frequently controlled through pyramided corporate structures, the top corporation often having but a small investment in the capital structure of the underlying operating company, but through control of directors was enabled to direct the use of the assets and earnings of subsidiaries.

"The Congress recognized the necessity in the public interest of the regulation of public utility holding companies and their subsidiaries, such regulation by the states, in its judgment being inadequate. It also found as a fact that internal and private control over the operation of the business of such enterprises, had in some cases resulted in serious loss to the holders of their securities, deterioration of their physical properties and a marked impairment of the ability of such institutions to perform their functions as public servants. (15 U.S.C.A. Sec. 79 [a], 49 Stat. 803); Electric Bond Company v. Commission, 303 U. S. 419, 442. It proposed to support, as far as possible, the form of such a company on one side and on the other to take precautionary measures to prevent abuses, and to this end it took under public supervision both the good and bad. *The present Act undertakes to bring within its ambit all subsidiaries subject to 'controling influence' of a parent. This phrase should be construed in the light of the purpose of the Act of which it is a part, and when understood in this*

setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully.

"Corporate wealth has become so widely distributed that control over it has tended to become more and more remote from ownership. Ownership of corporate shares without appreciable corporate control and control of corporate wealth without appreciable ownership has become a natural phenomenon of our economic system. Seven major types of corporate control were extant when the present Act was passed and others may develop from the urge of individuals to avoid public regulation. Congress recognized this condition, and the present Act imposes a wide discretion in the Commission in determining what is 'controlling influence' of a parent over a subsidiary public utility. However, this part of the present Act has its guide post, which prevents the Commission from exercising arbitrary power in enforcing it.

"The types of control referred to are: (1) through complete ownership of capital stock, (2) a majority ownership, (3) through a legal device without majority ownership, such as pyramiding through

holding companies or a large issue of non-voting stock with a comparatively small issue of stock with voting rights, or voting trusts, (4) *minority control, which exists when comparatively few shares of corporate stock are in the hands of one group and the remainder widely scattered,* (5) management control, which exists where all the stock is so widely distributed that no stockholder takes sufficient interest in the affairs of the corporation to influence or control it, (6) proxy control through committees, (7) through interlocking corporate officers or directors.

"The evidence in the case at bar shows marked features and significant incidences of the latent power of the North American Company to exercise a controlling influence over the petitioner. Compare Pipeline Company v. Slattery, 302 U. S. 300, 307; United States v. Union Pacific Railroad, 226 U. S. 61, 96; Southern Pacific Company v. Bogert, 250 U. S. 483, 492; Hyams v. Calumet & Hecla Mining Company, 221 F. 529 (C.C.A. 6); Moulton v. Field, 179 F. 673 (C.C.A. 7); Rochester Telephone Corporation v. United States and Federal Communications Commission, 307 U. S. 125, 145." (Emphasis ours.)

Applicant contends that there are distinguishing features in this case which justify a contrary result to that reached in the Detroit Edison case. We cannot agree. It is true that the historical relationship between Detroit Edison and North American was closer than that between applicant and North American, but it is also true that in one very

important respect the facts in the record before us present an even stronger case against applicant than in the Detroit Edison case—here North American has no stock interest competing against it; whereas in the Detroit Edison case, United Light and Power Company held an even larger interest than did North American.[20]

We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E. But we also think that it is clear that the reason for this non-interference has been North American's complete satisfaction with the local management and that its failure to interfere has been purposeful. Thus, Fogarty expressly testified that North American's present inactivity in the affairs of PG&E is due primarily to the fact that PG&E's business has enjoyed a normal growth and has progressed in a satisfactory manner.[21] Freeman testified that North

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(20) Cf. American Gas and Electric Company, 9 S.E.C. —— (1941), Holding Company Act Release No. 2749.

(21) Fogarty testified:

"Q. Would you say that the relationship which you have stated has existed between the North American Company and the applicant in the past was due primarily to the fact that applicant's business has enjoyed a normal growth and has progressed in a satisfactory manner?

A. Yes.

Q. You would not say, would you, Mr. Fogarty, that North American would not take a more active part in the affairs of the applicant in which it has

American's position with regard to PG&E is that North American's own interest is best served by

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an investment representing the market value of approximately $60-odd million, if conditions changed in such a manner that earnings were materially decreased and its ability to pay dividends on its common stock seriously threatened?

A. I don't think a drop in earnings of the Pacific Gas and Electric Company, or a change in its dividends, would be warrant for taking any active part in its management. If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation.

Q. If a situation arose in the affairs of the applicant which led you to the conclusion that the applicant would be benefited by the North American Company exerting a controlling influence over its affairs, would you take such steps as in your opinion were necessary to result in the exercise of such controlling influence?

A. Well, we would submit those views to the management and directors, and whether or not any action that would be based on those views would be taken would depend entirely upon the acquiescence and support of the management and directors of the company.

Q. But if the managers and directors of the company differed—if there arose a sharp difference of opinion between you and the management and directors on a particular matter, what steps would you take to oust the management?

A. I don't know that under those circumstances we could take steps to oust the management. But whatever action we would take would depend upon the circumstances that gave rise to that. It is extremely difficult to answer such a hypothetical question."

PG&E being regarded as a California company under California management.[22]

There is evidence to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a negative way. But our decision herein is based primarily on our finding that North American has the power—if the oc-

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(22) Freeman testified:

"Q. Well, why does the North American Company deem it advisable, if such it does, to not exercise the same supervision over the affairs of the applicant as is exercised over the affairs of its subsidiaries?

A. In the first place, the Pacific Gas & Electric Company has always been regarded as peculiarly a California company, and our desire has been to see them have as strong and representative a local Board as they possibly could have. It would not be practicable to induce representative men to serve on a Board of that kind if they thought their actions were going to be subject in any way to the direction or veto of a company three thousand miles away. It would affect their public relations. It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management.

Q. Then, would you say that your failure to exercise control of the applicant, or controlling influence over its management and policies, was due entirely to a feeling on the part of the North American Company that such a control or controlling influence was not desirable, or not to the best interests of it?

A. I would say that it was not desirable from the viewpoint that it would not be to our best interest as stockholders."

casion arises and if it so desires—to make its influence felt in a substantial and affirmative manner.[23]

We have found that North American owns 32.89% of applicant's common stock, which represents 17.71% of applicant's voting securities. This interest is valued on North American's books at a figure in excess of $63,000,000, and the dividends received on this stock represent from 20 to 25% of North American's corporate gross income. It is clear, therefore, that North American's stake in PG&E is of very substantial importance to it and is well worth protecting.

The next largest stockholder to North American owns less than 2% of applicant's voting securities and the remainder of these securities is widely scattered. It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract, would be offset by the voting

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(23) The fact that there is a real possibility of North American domination inherent in its concentrated stockholders was apparently recognized by Chickering and some of the other directors of PG&E at the time of the Western Power deal. See Chickering's testimony quoted at n. 6, supra.

power which the local management could attract.[24] It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes.

There are many other respects in which North American's stockholdings confer upon it great power in the affairs of PG&E. First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 24 to 30% of the votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum at all but two stockholders' meetings since it be-

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(24) Counsel for the applicant has argued that the native pride of Californians would rally California stockholders round the local management in any proxy fight. Even assuming this to be so, we still note that 52.1% of voting power is held by persons outside California and that most of these holdings are in and around New York and New Jersey. Moreover, we think that applicant's assumption that the local management would constitute a unanimous bloc on the same side of any conflict is of doubtful validity. And if there were any split in the local management, it is certainly reasonable to suppose that each group would be able to recruit its share of California stockholders.

came applicant's largest stockholder (see n. 11, supra); if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually 1/3 of applicant's common stock gives North American an effective veto power over any corporate action requiring the consent of 2/3 of each class of stock—e. g., mergers and consolidations.[25]

It is wholly untrue to characterize North American's relationship to PG&E as merely that of a stockholder holding an investment interest. It now has two of its representatives on PG&E's board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the "right" to such representation on applicant's board of directors and executive committee is, we think, of material signficance.[26] We find some significance,

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(25) See Deering's Civil Code of California (1937), Ch. XIII.

(26) Fogarty's testimony in this respect is highly illuminating. He testified:

"Q. If your holdings were considerably smaller, it is very possible that you would not be entitled to two members or three representatives on the applicant's Board. You might not even have any representation on the applicant's Board, that is true, is it not?

A. Yes, that is true.

Q. Then, in that sense, at any rate, you

too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American (see pp. 15-16, supra); no such reports are sent to any other stockholder.

Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to PG&E and as a result of which North American acquired its interest in PG&E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North Amer-

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would not be in a position to exercise the controlling influence over applicant's affairs that you can exercise in view of the fact that you have very large holdings.

A. The difference is that the officer of the North American Company being a director of the Pacific Gas & Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by the Board and two officers of the North American Company being directors and participating in that capacity as directors are, in a different position from a small stockholder who is not a director."

ican's interest. It is also significant that since Black became president of PG&E, no effort has been made by North American to have representation on the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of PG&E. As we said in Panhandle Eastern Pipe Line Company, 9 S.E.C.—(1941), Holding Company Act Release No. 2778, at p. 12:

> "We cannot be asked to shut our eyes to 'actualities in . . . intercorporate relationships' in determining the existence of control or controlling influence; Rochester Telephone Corp. v. United States et al., 307 U. S. 125 (1939); nor can we be expected to ignore the fact that 'historical ties and associations often serve as a substitute for, or a potent auxiliary of, the more obvious modes of control.' American Gas and Electric Company, 9 S.E.C.—(1941), Holding Company Act Release 2749."

It is significant, too, that although the record covers the entire history of the relationship of PG&E and North American, the only evidence offered by applicant to show an affirmative conflict between the local board and North American was the testimony to the effect that the board did not reconsider the dividend reduction in 1933 following Black's telegram and Dame's telephone call. It does not appear that North American made any

further attempt to obtain a reconsideration of this matter, and we do not think that the facts in the record indicate that the incident was the subject of any serious conflict between the local board and North American. Moreover, we note that in the fall of 1936, Black recommended the restoration of the old dividend and that his recommendation was followed. We do not think, therefore, that the evidence offered with respect to this incident is entitled to any great weight.

In view of the foregoing, we hold that applicant has not sustained the burden of proving that it is not "subject to the controlling influence" of North American within the meaning of Section 2(a)(8).[27]

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(27) Counsel for applicant in his argument made the statement that, if a case for granting the application is not shown here, then it is impossible to prove a case in which the application should be granted. Cases in which we have granted applications under Sections 2(a) (7) and 2(a) (8), however, show that the burden can be met when facts exist to negative the existence of susceptibility to domination. See Allied Chemical & Dye Corporation, 5 S.E.C. 151 (1939) (where applicant owned slightly more than 10% of voting securities of alleged subsidiary but had no representation on its board, and where United Light and Power Company owned more than 51% of voting securities and actually controlled the alleged subsidiary); The Detroit Edison Company, 7 S.E.C. 968 (1940) (where application granted with respect to United Light and Power Company which owned 20.27% of Detroit Edison's voting securities while North American owned only 19.28%; the record showed that numerous attempts by United Light and Power Company to obtain representation on the board and

The only question remaining is whether North American's influence in applicant's affairs is such "as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" that applicant be subject to the obligations, duties, and liabilities imposed by the Act on subsidiary companies of holding companies. Applicant is a company with stated assets of almost 800,000,000 serving in excess of $1,500,000 customers; its securities are listed and traded on national securities exchanges and are owned by investors throughout the country. In discussing the significance of the quoted phrase in Section 2(a)(8) in The Detroit Edison Company v. Securities and Exchange Commission, 119 F. (2d) 730 (C.C.A. 6th, 1941), the Court said (119 F. (2d), at p. 739):

> "The phrase 'public interest' as used means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's busi-

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a voice in the management had failed); Panhandle Eastern Pipe Line Company, 9 S.E.C.—(1941), Holding Company Act Release No. 2778 (applicant held not to be a subsidiary of Missouri-Kansas Pipe Line Company, despite ownership of 42% of applicant's common stock). See also Beebee Island Corporation, 7 S.E.C. 991 (1940); Lehigh Power Securities Corporation, 5 S.E.C. 143 (1939); West Penn Railways Company, 2 S.E.C. 992 (1937); Chicago District Electric Generating Corporation, 2 S.E.C. 10 (1937).

ness has or will affect the public adversely. The statute contemplates action prospectively. It is a preventive measure intended to regulate action before the interests of those concerned are adversely affected. The prime factors in determining statutory exemption are the size and extent of the company involved, the inter-company relationship, the distribution of its securities and the opportunity presented because of the relationship between the parent and subsidiary for excessive charges for services, construction work, equipment and materials, and the transactions entered into in which evil may result, because of the absence of arms' length bargaining or restraint of free and independent competition."

On the basis of the foregoing, we hold that applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.

We desire to emphasize that our holding in this respect is not to be taken to mean that any stigma is cast upon applicant or that we think that applicant is not properly regarded as a California corporation. Nor do we mean to indicate that the influence of North American necessarily is or will be improperly exercised. The only question which we

have decided is that, in the circumstance of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company.

An appropriate order will issue denying the application.

By the Commission (Chairman Eicher, Commissioners Healy, Pike, and Purcell), Commissioner Burke not participating.

[Seal] FRANCIS P. BRASSOR,
Secretary.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

United States of America

Before the
Securities and Exchange Commission

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 10th day of September A. D., 1941.

File No. 31-55

Public Utility Holding Company Act of 1935—Sections 3(a)(1), 3(a)(2) and 2(a)(8).

In the Matter of

PACIFIC GAS AND ELECTRIC COMPANY, et al.

ORDER DISMISSING APPLICATION IN PART, GRANTING APPLICATION IN PART, AND DENYING APPLICATION IN PART

Pacific Gas and Electric Company and Great Western Power Company of California having applied under Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 for orders exempting both companies from regulation under the said Act as holding companies, and having applied under Section 2(a)(8) of the Public Utility Holding Company Act of 1935 for orders declaring that neither company is a subsidiary of The North American Company;

Notice and opportunity for hearing on said application having been duly given; a hearing having

been held on said application; the trial examiner's report having been filed; exceptions to such trial examiner's report and supporting briefs having been submitted; oral argument having been heard; and the Commission having this day issued its Findings and Opinion herein;

It Is Ordered, on the basis of the said Findings and Opinion:

(1) That the application of Great Western Power Company of California be and it hereby is dismissed;

(2) That the application of Pacific Gas and Electric Company, insofar as it seeks an order under Sections 3(a)(1) and 3(a)(2) of the Public Utility Holding Company Act of 1935 exempting it from regulation under the said Act as a holding company, be and it hereby is granted; and

(3) That in all other respects the application of Pacific Gas and Electric Company be and it hereby is denied.

By the Commission.

[Seal] FRANCIS P. BRASSOR,
Secretary.

[Endorsed]: Filed October 24, 1941. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

CERTIFICATE OF CLERK, U. S. CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT, TO SUPPLEMENTAL RECORD CERTIFIED UNDER RULE 38 OF THE REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES.

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred fifty-three (153) pages, numbered from and including 1779 to and including 1933, to be full, true and correct copies of (1) Report and Findings of Fact by the Trial Examiner, (2) Findings and Opinion of the Securities and Exchange Commission, and (3) Order of the Securities and Exchange Commission dismissing application in part, etc., of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the petitioner, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and seal of the said United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 21st day of March, 1944.

[Seal] PAUL P. O'BRIEN,
Clerk.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 22, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 1936] At a Stated Term, to wit: The October Term A. D. 1944, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City of Los Angeles, in the State of California, on Monday the ninth day of October in the year of our Lord one thousand nine hundred and forty-four.

Present: Honorable William Denman, Circuit Judge, Presiding; Honorable Albert Lee Stephens, Circuit Judge.

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY, Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION, Respondent

ORDER

Upon oral motion of Mr. Herman Phleger, counsel for petitioner, and good cause therefor appearing, the further order heretofore made and entered by this Court on February 23, 1944, reading as follows:

> "It is further Ordered that the order of the Securities and Exchange Commission of September 10, 1941, denying the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of The North American Company, be, and hereby is stayed until after the Supreme Court of the United States disposes of the petition for certiorari to be hereafter made by said petitioner, provided however, that said petition for writ of certiorari shall be filed in the office of the clerk of the Supreme Court of the United States on or before April 10, 1944, and the decree of this Court be, and hereby is stayed accordingly."

is hereby clarified to read as follows:

> "It is Further Ordered that the order of the Securities and Exchange Commission of September 10, 1941, denying the application of said Pacific Gas and Electric Company for an order declaring it not to be a subsidiary of The North American Company be, and hereby is stayed until after the Supreme Court of the

United States disposes of the petition for certiorari to be hereafter made by said petitioner (that is to say until such petition be denied, or, if the same be granted, until final decree of said Supreme Court), provided however, that said petition for writ of certio- [fol. 1937] rari shall be filed in the office of the Clerk of the Supreme Court of the United States on or before April 10, 1944, and the decree of this Court be, and hereby is stayed accordingly."

and said order of this Court as hereby clarified is reaffirmed and the said order of said Commission is hereby stayed accordingly.

It is further ordered that this order be entered as of February 23, 1944.

I hereby certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this thirtieth day of October, 1944.

Paul P. O'Brien, Clerk, U. S. Circuit Court of Appeals, for the Ninth Circuit.

[Endorsed:] No. 9918. United States Circuit Court of Appeals for the Ninth Circuit. Pacific Gas and Electric Company vs. Securities and Exchange Commission. Certified Copy of Order.

No. [redacted] 55

FILED
APR 10 1944
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1943

PACIFIC GAS AND ELECTRIC COMPANY, PETITIONER,

v.

SECURITIES AND EXCHANGE COMMISSION

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

(With Appendix)

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In the Supreme Court of the United States

OCTOBER TERM, 1943

No.....

PACIFIC GAS AND ELECTRIC COMPANY, PETITIONER,

v.

SECURITIES AND EXCHANGE COMMISSION

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit

---

Petitioner, Pacific Gas and Electric Company,[1] prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R 1776), which affirmed, by an equally divided court (R 1741), an order of the Securities and Exchange Commission (R 1932), denying Petitioner's application for an order, pursuant to Section 2(a)(8) of the Public Utility Holding Com-

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NOTE: All emphasis is supplied by us unless otherwise noted.

[1]For convenience Pacific Gas and Electric Company will be called Pacific Gas; the Securities and Exchange Commission, the Commission; The North American Company, North American; and the Public Utility Holding Company Act of 1935, the Act.

pany Act of 1935, declaring it to be not a subsidiary of The North American Company, a registered holding company.

OPINIONS BELOW

The decision in the Circuit Court of Appeals (six judges participating), affirming the order of the Commission by an equally divided court, and also the dissenting opinion, are reported in 139 F.2d 298. The prior opinions in the Circuit Court of Appeals (three judges sitting) are reported in 127 F.2d 378.[1] The opinion and order of the Commission dated September 10, 1941, is reported in 10 S.E.C. ....., Holding Company Act Release No. 2988.

JURISDICTION

The judgment of the court below was entered November 18, 1943 (R 1776). A timely petition for rehearing was filed, and was denied February 23, 1944 (R 1777), at which time the court *sua sponte* entered an order continuing in effect the stay of the order of the Commission theretofore granted and likewise staying its mandate until after this Court disposes of a petition for certiorari, if such petition be filed on or before April 10, 1944.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347) and under Section 24(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79x).

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[1]The majority opinion in the court below on the first hearing is printed at page 15 of the Appendix hereto and the opinion on the rehearing at page 34 of the Appendix.

STATUTE INVOLVED

The statute involved is the Public Utility Holding Company Act of 1935 (49 Stat. 803; 15 U.S.C., Sec. 79-79z6) and particularly Sections 1, 2(a)(8) and 24 thereof, which are printed at page 1 of the Appendix.

This statute provides for Federal control of public utility holding companies, and their eventual elimination, and brings under such control not only the holding companies, but also their subsidiary operating companies.

Section 2(a)(8) provides that any company 10% or more of whose voting stock is owned by a holding company is a subsidiary thereof unless the Commission by order declares it not to be a subsidiary; and requires the Commission to declare it not to be a subsidiary if, on application by the company, the Commission finds that it is not controlled by, and that its management or policies are not subject to, the controlling influence of the holding company.

QUESTIONS PRESENTED

The questions here are:

(a) Whether the Commission properly interpreted and applied the Act in denying the application of Pacific Gas to be declared not to be a subsidiary of North American (owner of 17.71% of Pacific Gas voting stock), irrespective of whether in fact Pacific Gas is subject to its controlling influence.[1]

[1]It has never been contended that Pacific Gas is controlled by North American or is an intermediary. The only issue considered by the Commission is whether Pacific Gas is subject to the "controlling influence" of North American under clause (iii) of Section 2(a)(8) (R 1887-9). The Commission did not find that such influence existed.

(b) Whether the court below afforded the judicial review of the Commission's order required by Section 24 of the Act when it affirmed the order by an equally divided court.

Petitioner Contends

1. A local utility is not subject to regulation under the Act as a subsidiary of a holding company unless it is in fact controlled by or is subject to the controlling influence of such holding company.

The Commission here misconstrued and misapplied the Act in holding Pacific Gas to be a subsidiary of North American, irrespective of whether in fact it is subject to North American's controlling influence. Its order is based on its finding that North American as owner of 17.71% of the stock of Pacific Gas "has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner" (R 1922). It held that the mere possibility of such influence amounted to the *controlling* influence required by the Act, and construed the Act as presumptively requiring that Pacific Gas be regulated unless "excepted" (R 1931).

Admittedly there have never been any intercorporate transactions between these companies, and North American has made no attempt to exert any controlling influence over Pacific Gas (R 1920). There was no substantial evidence from which the existence of a controlling influence could be inferred, and there is ample evidence of its non-existence.

2. There is no substantial evidence of the existence of a controlling influence of North American over Pacific Gas.

3. The court below erred (a) in affirming the Commission's order by an evenly divided court, thus denying the review provided in the Act and (b) by leaving in effect and failing to set aside the order of the Commission which is based upon a misconstruction of the Act, and is unsupported by evidence.

STATEMENT OF THE CASE

The Statute

The pertinent portions of the Act are printed in the Appendix, pages 1-14. Section 2(a)(8), which prescribes the procedure for determining whether or not a local utility is a subsidiary of a holding company, will be found commencing at page 7 of the Appendix.

As indicated by its title (Public Utility Holding Company Act of 1935), the Act was passed to meet the problems and eliminate the evils attributed to interstate public utility holding companies. These evils (recited in Sec. 1, Appendix, p. 1) arise from ineffective state regulation and transactions between holding companies and their subsidiaries not carried out at arm's length. As stated in the Senate Report on the bill (No. 621, 74th Congress, First Session, page 4):

> "This title is concerned only with holding companies in the public utility field, defined for the purposes of the title as companies which control operating public-utility companies."

The Act was not designed to regulate any local utility as such, but "only when its corporate and financial activities became inextricably involved with the holding company which controls it. The limited authority of the Commission over an operating company exists only to the extent necessary to control intercorporate financial relationships within an interstate holding-company system. * * * The Commission has no authority over an independent operating company and no authority over an intrastate holding-company system which is independent and not under the control of a super-holding company outside of the state." (Page 9 of Appendix A to the Commission's brief in *Electric Bond & Share Co. v. S. E. C.*, 303 U.S. 419.)

The test of whether a local public utility is or is not under the Act, is whether it is in fact "controlled by", or whether its "management or policies" are subject to the "controlling influence" of the holding company (Sec. 2(a)(8)—Appendix, p. 7).

The machinery for the determination of this jurisdictional fact of "control" or "controlling influence" is this: if less than 10% of the voting stock of the local utility is owned by the holding company, then the local company is not deemed a "subsidiary" and subject to regulation unless the Commission initiates a proceeding and, after hearing, finds that it is controlled by or subject to the controlling influence of the holding company; on the other hand, if 10% or more of the voting stock of the local utility is owned by the holding company, then the local utility is deemed to be a subsidiary, unless the Commission finds that it is not subject to the control or controlling in-

fluence of the holding company, and it is provided that the Commission *shall,* on application, declare it not to be a subsidiary upon proof that it is not controlled by or subject to the controlling influence of the holding company.

Ownership of 10% of a local utility's stock has significance only as marking the point where the Commission or the utility is placed under the duty of initiating proceedings for a determination of status. Senator Wheeler, in charge of the bill, pointed this out during the debate when he said (79 Cong. Rec. p. 6397):

> "This is only prima facie evidence; but even if they hold 40 percent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill."

See also Senator Wheeler's remarks at 79 Cong. Rec. p. 8439, where he said:

> "The mere ownership of the 10 percent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company."

The existence of control or controlling influence is to be determined as of the time of the inquiry. The Act speaks in the present tense and requires findings that the management and policies "are" subject to the controlling influence of the holding company. The Act, moreover, contemplates that a future possibility

of a controlling influence shall not be the basis for denial, since it provides that the Commission may require periodic renewal of the order, the rendition of reports or other safeguards which it finds "necessary or appropriate to ensure that in the case of the applicant the conditions specified * * * are satisfied during the period for which such order is effective" and it may revoke the order whenever it finds that such conditions are not satisfied (Sec. 2(a)(8), Appendix p. 7).

It is clear that Congress did not intend that 10% owned local utilities should be regulated under the Act unless "excepted" by the Commission, or that the statute "presumptively requires" that a 10% owned local utility be regulated under the Act as a subsidiary, as was held by the Commission in this case.

The foregoing cannot be more succinctly stated or the rationale of the Act more clearly expounded, than in the following passage quoted from page 195 of the brief of the Commission in this Court in the *Electric Bond and Share* case (303 U.S. 419) in which case the Act was held constitutional.[1] While the discussion there refers to "control" from the standpoint of the holding company, the statutory provision with respect to "control" from the standpoint of the sub-

[1]This brief is signed by Homer Cummings, Attorney General, Allen E. Throop, General Counsel, Securities and Exchange Commission, Robert H. Jackson, then Assistant Attorney General, and by Benjamin V. Cohen and Thomas G. Corcoran, Special Assistants to the Attorney General and recognized authors of the bill.

sidiary is similar, and the discussion is equally applicable:

> "The bill as originally introduced defined a holding company as a company which directly or indirectly controls a public-utility company. As thus drafted the bill would have made it necessary for a company to determine for itself and at its own risk whether it had such a controlling authority over a utility company as to constitute it a holding company. Had this provision not been changed or had it taken the slightly modified form suggested by the Committee of Public Utility Executives, holding companies would have had to guide their own action on the basis of a standard no more definite than that given to the Commission to guide its administrative determinations. Anyone familiar with modern corporate affairs knows the practical difficulties involved in determining the existence or non-existence of corporate control, one of the most elusive problems in corporate finance. There is no single, inflexible rule (whether it be stock ownership, interlocking directorates, or interlocking banking arrangements) that will give the correct solution in all cases. Those practical difficulties were brought out clearly in the testimony before the Congress of counsel for the Committee of Public Utility Executives (Hearings before the Committee on Interstate Commerce, United States Senate, 74th Congress, 1st Session, on S. 1725, p. 423) and in the testimony of counsel for the defendants (Id. at 326-327). The Congress in reliance upon the Sherman Act precedents (*Nash v. United States,* 229 U.S. 373) might have left the bill as it was originally drafted. Had it done so it might have

taken many years and successive decisions of this Court to determine just what companies are and which are not holding companies. The result would have been as unsatisfactory to the holding companies as to the public, and there would have been the further danger that the provision might be held invalid for indefiniteness. Cf. *United States v. Cohen Grocery Co.*, 255 U.S. 81. But a standard too vague to support a self-operating provision enforced by criminal liability may well state a policy and purpose sufficiently definite to serve as an appropriate standard for the guidance of administrative action. *Highland v. Russell Car & Snow Plow Co.*, 279 U.S. 253; *Continental Baking Co. v. Woodring*, 286 U.S. 352, 368.

"The standard of 'control' was known to be susceptible of judicial and quasi-judicial determination. It had been adopted by the courts themselves in some of the Sherman Act cases. *United States v. Union Pacific R. Co.*, 226 U.S. 61. The Congress, however, found it impracticable to put upon the Commission the burden of making the initial specific determination of control for each and every holding company before that company could be deemed a holding company and required to register. Not only would such procedure have been too cumbersome and dilatory to be effective, but it would have placed the burden of proof upon the Commission to ferret out elusive and subtle facts peculiarly within the knowledge of each company, an almost impossible task.

"The Congress selected the element of stock ownership, the factor most usually indicative of control, as *prima facie* evidence of control. And in the same provision the Congress set up the

machinery for rebutting this presumption so that a company may readily prove, if such be the fact, that it does not possess control. Such burden of proof is not onerous, because every company has completely within its own organization full knowledge and control of all the facts and evidence. And the Act provides that upon the mere filing in good faith of an application for exemption the company shall automatically be exempted until the Commission acts upon the application. Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (Section 24(a)). No more careful and painstaking effort to meet every legal and practical requirement involved in this difficult and complicated situation could have been made by a legislative body.'"[1]

The Act clearly shows the intent of Congress that local utilities shall not be subject to the Act unless part of a holding company system; that the jurisdictional fact is whether or not the local utility is, at the time of the inquiry, in fact controlled by or subject to the controlling influence of the holding company; and that the presence of a 10% stock ownership is only a procedural device to set in motion an inquiry for the determination of the jurisdictional fact and is not of itself substantial evidence of the existence of such controlling influence.

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[1]See Senate Committee Report on the Bill (74th Congress, First Session, Report 621, page 5; also *Electric Bond and Share Co. v. S. E. C.* (C.C.A. 2) 92 F.2d 580, 592.

Pacific Gas a Local Utility

Pacific Gas distributes gas and electricity in California, where all of its properties and business are and always have been located. Incorporated in California in 1905, its properties include those of many predecessor companies, some of which were started in the 1850's to supply water and power to the gold mines. Its office is and always has been in San Francisco and its Board of Directors has never held a meeting elsewhere.

When the Act was adopted, North American owned 17.71% of the voting stock of Pacific Gas. This stock was issued to North American in 1930 by Pacific Gas in payment for certain utility properties in California theretofore controlled by North American, the purchase of which had long been planned by Pacific Gas. The purchase and the payment in stock was authorized by the California Railroad Commission.

When the purchase was made, Pacific Gas, realizing that the stock issued in payment would make North American its largest single stockholder, demanded and received assurances from North American that it would not attempt to interfere with its management or policies, or increase its holdings. It was also agreed that North American might nominate three out of fifteen directors, the number it could elect by exercise of its cumulative voting rights under California law, and also that one of these directors would be named to the Executive Committee consisting of five members. At the time of the hearing there were only two directors named by North American on the Board of Pacific Gas, neither of whom was on the Executive

Committee and neither of whom had attended any Board meetings.

There have never been any transactions of any kind between the two companies since North American received Pacific Gas stock in payment for its properties. It is also admitted that none of the relationships so often present between holding companies and operating companies in which they owned stock, were present or had ever existed here; there were admittedly no contracts, no exchange of operating information, no loans or financial transactions, no engineering, construction, accounting or other services, no common attorneys, and no banking or investment connections.

Proceedings Before the Commission

In November 1935, Pacific Gas filed its application under Section 2(a)(8), seeking a declaration that it is not a subsidiary of North American. The filing of this application exempted Pacific Gas from the Act until it should be disposed of. Five years later the matter was assigned for hearing before a trial examiner, which hearing commenced November 12, 1940, and concluded January 16, 1941.

Every director and principal officer of Pacific Gas was examined, and except for the two directors nominated by North American, all testified that they were not and could not be influenced by North American. The directors nominated by North American testified that that company held the stock of Pacific Gas solely as an investment and they had not attempted to, and did not think they could, influence its management or policies. The remaining directors, thirteen in number,

were made up, five of principal officers of the company and eight outstanding California businessmen, some of whose fathers had been founders of predecessor companies. All owned or were associated with the owners of substantial amounts of stock.

Upon invitation of the Commission, the California Railroad Commission appeared and participated. It showed that under the California Public Utility Act, Pacific Gas, since 1912, has been subject to its regulation, which covers all phases of its activities, including the issue of securities, rates, service, etc. and that it had been before the Commission in more than 900 proceedings. The Railroad Commission's statement (R 1875), concluded:

> "* * * we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations."

Following the hearing, the Commission's Trial Examiner filed a report (R 1779), recommending the granting of the application, and containing comprehensive findings of fact. He found that there had never been any inter-company transactions of any

kind between Pacific Gas and North American since the latter became a stockholder, and that Pacific Gas was not controlled by nor were its management or policies subject to the controlling influence of North American.[1]

The Commission, on September 10, 1941, denied the application. The basis of its decision is apparent from the following passages in its opinion (R. 1883):

> "There is almost no dispute as to the facts in this case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a)(8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner." (R 1912)

The opinion also states that:

> "We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E." (R 1920)

Again the opinion says:

> "But our decision herein is based primarily on our finding that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner." (R 1922)

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[1]These findings are printed at page 1779 of the Transcript and cover all essential facts. As pointed out in the Commission's opinion (R 1912), the Commission does not dispute them.

The opinion concluded with the following statement:

> "The only question which we have decided is that, in the circumstances of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company." (R 1931)

The Proceedings in the Court Below

In the first decision of the court below, three judges sitting, Judge Haney, with Judge Stephens concurring, approved the Commission order. Judge Garrecht dissented (R-1718).

The majority opinion, while saying "that a reasonable man could reach the conclusions the Commission reached and therefore the finding[1] must be sustained", finally turned upon the proposition that under clause (iii) of Section 2(a)(8), the Commission had uncontrolled discretion to subject a local utility (10% of whose stock was owned by a holding company) to regulation under the Act if it believed it was in the public interest to do so, irrespective of any evidence. The court reached this remarkable conclusion by construing Section 2(a)(8) as containing four conditions instead of three, the fourth condition being termed the "necessity clause", which, being independent of the control or controlling influence clauses, authorized the Commission to dismiss an application if it believed

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[1]The "finding" was only that Pacific Gas had not *demonstrated* the absence of controlling influence or the future possibility of any influence.

that it was in the public interest to hold the local utility subject to regulation under the Act. (Appendix pp. 29-33)

This novel construction of the Act had never before (nor has it since) been advanced by the Commission or by any court, and the Commission's counsel made no attempt to sustain it.

A rehearing before the entire court, then consisting of seven judges, was granted (R 1739). On rehearing the court affirmed the order of the Commission, by an equally divided court, Judge Haney having died in the interim.

The court below entered its order without any expression other than that its action was "by an evenly divided court" (R 1741).

Judge Garrecht, however, filed a dissenting opinion from the judgment affirming the Commission's order, in which dissent Judge Mathews joined. (Appendix, p. 34) This dissenting opinion contains an extensive analysis of the record before the Commission, and finds that there was no substantial evidence of the existence of a controlling influence by North American over Pacific Gas; that the Commission's findings rested on speculation and conjecture as to whether North American might acquire a controlling influence in the future; that the Commission misinterpreted the Act by holding that susceptibility to future influence was the equivalent of the controlling influence required by the Act.

Judge Garrecht characterizes the Commission's treatment of the evidence as follows:

> "To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose. * * *" (Appendix p. 51)

Again, Judge Garrecht says:

> "There are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to 'events which might happen' but 'not what actually happened'." (Appendix pp. 53-54)

He also says:

> "It is also clear that the vague, artificial tests here employed are not sanctioned by the Act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence." (Appendix p. 63)

The opinion concludes with this statement:

> "To sustain the Commission on the record here would require us to hold, as the court did on the first hearing, that its determination of what is necessary in the public interest is a matter within the uncontrolled discretion of the Commission. This is not the proper interpretation of the statute and counsel representing the Commission do not so contend." (Appendix p. 67)

REASONS FOR GRANTING THE WRIT

The questions here presented are important questions in the interpretation and administration of the

Act. None has heretofore been settled by this Court. Despite the requirement of the Act that orders of the Commission shall be subject to judicial review on petition of an aggrieved party, we shall be deprived of such review unless this Court grants the writ here sought.

These questions are admittedly different from those involved in any of the other cases under Section 2(a)(8) of the Act. An examination of all cases which we have been able to find involving this section, reveals that in every case where the Commission found the local utility to be a subsidiary of a holding company, it had in fact been actually controlled or subjected to a controlling influence, and there had been intercompany transactions—conditions admittedly not present here.

On the first hearing in the court below, the majority opinion sought to sustain the order by a completely novel construction of the Act, under which the Commission, on its own concept of the public interest, regardless of whether or not its finding was sustained by evidence, could subject a local utility to federal regulation.[1]

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[1]In granting the rehearing, the court below characterized its opinion as follows:

> "In the above entitled case this Court (three judges sitting, two judges agreeing, one dissenting) has announced a construction of the Securities and Exchange Act which, if adhered to, will have an important and far-reaching effect upon the administration of the Act"

and pointed out "our construction of the Act was not intimated in either brief or in the oral argument" (R 1739).

On rehearing, the court below affirmed the Commission's order by an equally divided court without any expression whatever of the views of those judges who favored affirmance of the order, although it is fair to assume they did so on the grounds set forth in the first opinion, which, as the court pointed out, involved a construction of the Act not urged by the parties, and which if adhered to would have "far-reaching effect on the administration of the Act". Two of the judges joined in a dissenting opinion in which the absence of any substantial evidence justifying denial of the application was forcefully pointed out.

There are now printed in the official reports: (1) the opinion of the Commission; (2) the affirming and dissenting opinions of the court below on the first hearing; (3) the order of the court below affirming by an even division; and (4) the dissenting opinion on rehearing.

Unless this Court grants the writ, there will have been no review of the order, and these conflicting interpretations and applications of the Act will be a source of confusion, leaving both the Commission and all affected companies in uncertainty as to its true meaning. It is submitted that the serious but unresolved questions involved in the interpretation of this important federal statute, should be settled by this Court.

The Commission Misconstrued and Misapplied the Act.

The Commission erroneously construed the Act as empowering it to exercise control over a local utility

even though it does not find that the utility is either controlled by or subject to the controlling influence of a holding company and where the evidence not only does not support such a finding but abundantly supports a contrary finding.

There is no dispute as to the facts. The Commission said that "There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a)(8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner" (R 1912).

The Commission said the point at issue was one of statutory interpretation. This issue is—which of these two interpretations of the Act is correct?

Our interpretation is that a local utility is only subject to the Act if in fact controlled by or subject to the controlling influence of the holding company at the time of the hearing; that the proceeding before the Commission to determine this jurisdictional fact is quasi judicial in character and the issue is to be decided on the record at the hearing; that the application cannot be denied if the evidence shows the nonexistence of control and controlling influence; that if the Commission believes that a controlling influence *might* arise in the future, though not present at the time of the hearing, it cannot deny the application, but

must issue a conditional order as provided in the Act.[1]

The Commission's interpretation is that a 10% owned local utility is "by definition" a subsidiary and subject to Commission regulation unless "excepted" by the Commission, and the Commission may, as it did in this case, deny the application, even though the existence of control or controlling influence is not found, and cannot be found on the evidence—if it believes that at some future time the holding company may exert a substantial influence. The Commission's view as expressed in its opinion is: "The only question we have decided is that, in the circumstances of this case where the statute *presumptively requires* that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not *demonstrate* that PG&E is entitled to be *excepted* from the general requirement of regulation as a subsidiary of a registered holding company" (R 1931).

The Commission's misconstruction of the Act infects its entire order. Admitting that North American had never controlled or exerted a controlling influence over Pacific Gas, and that there had never been any intercompany transactions, the Commission nevertheless denied the application solely because of its belief "that North American has the power—if the occa-

[1]We do not contend, as the Commission frequently erroneously suggests we do, that the "controlling influence" must be exercised in order to meet the statutory requirement. For the purposes of this case, we concede that the present existence of the power, whether or not actually being exercised, is sufficient. The power, however, must be "controlling" and not something less then controlling.

sion arises—and if it so desires, to make its influence felt in a substantial and affirmative manner".

The question presented on this phase of the case is not whether the Commission's order might have been sustained had it properly pursued its statutory authority. The question is, what did the Commission do, and did it properly construe and apply the Act?

The Commission did not find from the evidence that any controlling influence existed. It merely said that it was not convinced that Pacific Gas had demonstrated the absence thereof. This is attributable entirely to its belief that it could deny the application, regardless of the absence of evidence of the existence of a controlling influence, if it thought that there was a possibility of *any* influence being exerted in the future.

An ultimate finding of the Commission, couched more or less in the statutory language, must be disregarded where, as here, it appears from the entire opinion that the Commission, in fact, reached its conclusion upon a mistaken view of its statutory powers.[1]

Where the Commission has misconstrued its statutory authority and based its action upon such misconstruction, it is immaterial whether the order might have been sustained by substantial evidence had the Commission properly pursued its statutory authority. In *Securities and Exchange Commission v. Chenery Corp.*, 318 U.S. 80, 93, this Court held:

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[1] *Southern Pacific Co. v. Interstate Commerce Commission*, 219 U.S. 433, 449; *Passenger Scrip Case*, 263 U.S. 603, 611; *Ann Arbor R.R. Co. v. U. S.*, 281 U.S. 658, 665; *Anchor Coal Co. v. U. S.*, 25 F.2d 462, 464.

"Judged, therefore, as a determination based upon judge-made rules of equity, the Commission's order cannot be upheld. Its action must be measured by what the Commission did, not by what it might have done. It is not for us to determine independently what is 'detrimental to the public interest or the interest of investors or consumers' or 'fair or equitable' within the meaning of §§ 7 and 11 of the Public Utility Holding Company Act of 1935. The Commission's action cannot be upheld merely because findings might have been made and considerations disclosed which would justify its order as an appropriate safeguard for the interests protected by the Act. There must be such a responsible finding. Compare *United States v. Chicago M., St. P. & P. R. Co.*, 294 U.S. 499, 510-11. There is no such finding here."

That the Commission misconstrued and misapplied the Act is further shown by the following:

1. It imposed upon Pacific Gas the virtually impossible burden of "demonstrating" a negative, i.e., that a controlling influence did not exist.

The Commission said:

"First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of *demonstrating* that its management and policies are not subject to the controlling influence of North American" (R 1912).

"* * * We hold that applicant has not *demonstrated* that its management and policies are not subject to the controlling influence of North American * * *" (R 1930).

> "* * * The facts in the record before us do not *demonstrate* that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company" (R 1931).

This requirement of proof to a demonstration should be contrasted with the statements of those who spoke in Congress in favor of the enactment of the statute, and of Commission counsel who successfully argued in this Court in support of the constitutionality of the Act. The latter referred to the presumption as one "which might be rebutted", as one under which a company may "readily prove absence of control" and as one which "can readily be rebutted * * * upon a showing that the company does not in fact exercise control".

Particularly where it is required that the parties subject to the burden of proof establish a negative convincing proof is not required, let alone demonstration. All that is required is that the proof be sufficient to show that the negative fact or circumstance is probable. 20 Am. Jur. 1099; *Prentice v. Crane,* 234 Ill. 302, 84 N.E. 916; *Baltimore etc. R. Co. v. United States,* 298 U.S. 349, 378.

2. It treated the procedural provision of the Act governing the initiation of proceedings for determination of status as evidence to be given weight and effect as against undisputed evidence that Pacific Gas is not in fact subject to the controlling influence of North American. It converted a procedural rule into a dec-

laration of substantive law; and treated the procedural device as evidence.

A presumption does not have a quality of affirmative evidence. *Del Vecchio v. Bowers,* 296 U.S. 280; *Meeker v. Lehigh Railroad,* 236 U.S. 412, 430; *Mobile etc. R. Co. v. Turnipseed,* 219 U.S. 35; *Western R. Co. v. Henderson,* 279 U.S. 639.

It is well settled that a presumption cannot be weighed as evidence against direct evidence to the contrary. *New York Life Ins. Co. v. Gamer,* 303 U.S. 161; *Tot v. United States,* 319 U.S. 463; *Commercial Corp. v. New York Barge Corp.,* 314 U.S. 104.

3. It treated an ownership of 17.71% of the voting stock as being, in and of itself, sufficient ground for denying the application.

While a 10% stock ownership may be evidence to be given appropriate weight, it seems clear that Congress could not have intended that, by itself, it would be deemed to constitute sufficient basis for denying an application. Otherwise the provision for judicial review is meaningless, since the very fact giving rise to the inquiry would itself preclude reversal of the Commission. This is recognized in the Commission's brief in the *Electric Bond & Share* case, supra, page 8, where it is said that:

> "Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence."

4. It construed the words "subject to controlling influence" used in the Act as meaning "susceptible to

domination". (See Judge Garrecht's opinion, Appendix p. 61.)

5. It held that the fact that North American's stock would enable it "to make its influence felt in a substantial and affirmative manner" and would make it a "formidable opponent" in a proxy fight amounted to controlling influence.

6. It held that a mere possibility of future control was sufficient ground for denying the application.

Even if the Commission Did Not Misconstrue and Misapply the Act, the Order Should Be Set Aside Because Not Supported by Substantial Evidence.

As pointed out, the Commission misconstrued and misapplied the Act, and not having followed its statutory authority, the order should be set aside.

But even if it had followed its statutory authority, the order should be set aside because not supported by substantial evidence.

We assert that there is no evidence of record from which a reasonable person could conclude that a controlling influence existed. We go further and assert that the Commission's failure to make such a finding was because it did not believe that the evidence would justify such a conclusion. Judge Garrecht's opinion so clearly shows that there was no substantial evidence of controlling influence that we will not further deal with the point but request this Court to examine Judge Garrecht's opinion—Appendix p. 34.

Indeed it seems clear from Judge Haney's opinion on the first hearing (Appendix p. 15) that he would

not have upheld the order except for his erroneous view that the Act contained a fourth requirement, i.e. the necessity clause, which empowered the Commission to deny the application even if a controlling influence was shown not to exist, if the Commission believed such was in the public interest, a construction never before or since announced by the Commission or by any court. It is reasonable to suppose, in the absence of a further opinion, that the judges who favored affirmance on rehearing did so on the same grounds.

While Commission orders under Section 2(a)(8) have been reviewed in four other cases,[1] the facts here, summarized in earlier pages and shown in detail in the opinion of Judge Garrecht, are entirely different from those in any of these cases.

The circumstances to be considered in ascertaining whether a controlling influence exists are set out in *American G. & E. Co. v. S. E. C.* (C.C.A. D.C.), 134 F.2d 633, 642. The opinion in that case was by Mr. Justice Rutledge, who said:

> "The existence of 'controlling influence' is a factual determination to be ascertained in the Commissioner's expert judgment by the weighing of circumstantial evidence and the drawing of reasonable inferences therefrom. The principal factors in determining this from the special cir-

[1] *Detroit Edison Co. v. S. E. C.* (C.C.A. 6) 119 F.2d 730; *Hartford Gas Co. v. S. E. C.* (C.C.A. 2) 129 F.2d 794; *Public Service Co. of N. J. v. S. E. C.* (C.C.A. 3) 129 F.2d 899; *American G. & E. Co. v. S. E. C.* (C.C.A. D.C.) 134 F.2d 633.

cumstances of each case for the statutory exemption are the size and extent of the companies involved, the extent of the intercompany relationships, the ownership and distribution of securities, and the parent company's part in the organization and development of the subsidiary company together with the past relationships and, because of the public interest and purposes of the Act involved, consideration must be given to the relationship of charges between the two companies for financing, service and construction contracts, etc."

In that case and also in the *Detroit* and *Public Service Company of New Jersey* cases, the utility had been organized under the auspices of the holding company. There was a long history of affiliation of a majority of the utility's directors and officers with the holding company. The holding company had participated in underwriting the utility's securities. There were management contracts, joint purchasing arrangements, common offices, and many of the other intercorporate transactions which the Act sought to regulate. In the *Hartford* case, while the past historical connections of the company were not shown to have been as extensive as in the other cases, there was an indirect underwriting of securities by the holding company and the purchases of gas accounting for nearly 60% of the utility's operating expenses from a recognized affiliate of the holding company.

Here, on the other hand, there have never been any of these intercorporate relationships. The Trial Examiner's findings of fact in this regard, which were

approved by the Commission, and which are recited in Judge Garrecht's opinion (Appendix p. 59), are as follows:

> "There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930. (The agreement by which PG&E acquired the properties of North American in California.)
>
> "Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant.
>
> "There has been no exchange of operating information between the Applicant and the admitted subsidiaries of North American.
>
> "There have never been any intercompany loans or financial transactions between the Applicant and North American or its subsidiaries.
>
> "All of Applicant's major acquisitions and construction projects have been and are decided upon, budgeted and carried out within the PG&E organization and entirely independent of North American at all stages.
>
> "North American's organization has never assisted Applicant in the preparation of any Registration Statements, nor has its Secretarial Department ever assisted Applicant in any manner.
>
> "Applicant and North American do not employ the same accountants, attorneys or engineers.
>
> "Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition. North

American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon.

"No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other."

In the last analysis the Commission's denial of the application rests solely on the ownership by North American of 17.71% of Pacific Gas stock, the very fact which gives rise to the proceeding before the Commission.

The Court below did not give the Review contemplated by the Act.

The proceeding in the court below being an original proceeding by virtue of Section 24(a) of the Act, it was error for the court to affirm the order of the Commission by an equal division. The effect of such affirmance is to deny the judicial review to which, by the statute, the parties are entitled.

In *Durant v. Essex Company* (1868) 7 Wall. 107, this Court held that affirmance of an appeal by an equally divided court decided nothing except that the case was closed and was equivalent to dismissal of the appeal.

Section 24(a) imposes a positive duty on the Circuit Court of Appeals to determine the questions arising out of a petition to review an order of the Commission. The section provides that upon the filing in the Circuit Court of Appeals of a transcript of the record before the Commission "such court shall

have exclusive jurisdiction to affirm, modify or set aside such order in whole or in part". The power of the Commission itself is lost during the pendency of the proceeding and the court is bound to decide the controversy.

In an original proceeding before a court made up of more than one judge, concurrence in a decision by a majority of the court is essential to any action. If such concurrence cannot be obtained, the matter must remain in *statu quo,* in the absence of some provision such as formerly existed in connection with the Circuit Courts of the United States, when, on a division of opinion, the matter could be certified to a higher court for disposition. For a court of first instance, equally divided on the merits, to attempt to dispose of the matter one way or the other amounts to a decision of the case by less than a majority of the court. (21 *C.J.S.* 296).

In *Re First Congressional District Election,* 295 Pa. 1, 144 Atl. 735, 739, it was held:

> "When a legal or semi-legal tribunal consists of only two members, neither one of them can perform an affirmative act changing or which may change an existing condition; for it takes a majority of the whole body to do this and one is not a majority of two. It is a universal rule that when a judicial or semi-judicial body is equally divided, the subject matter with which it is dealing must remain in statu quo."

See also: *Deglow v. Kruse,* 57 Ohio St. 434, 49 N.E. 477; *In re Kings Co. E. R. Co.* (1879) 78 N.Y. 383, 385.

The rule differs in this respect from the rule on appeal where a judicial decision having once been rendered, it is proper for the Appellate Court, being equally divided in opinion, to affirm the judgment. However, even in this situation it has been the practice of this Court, where a change in the personnel of the Court is in contemplation, to grant a rehearing, so that the appeal may be disposed of on the merits. See *Commercial Molasses Corp. v. New York Tank Barge Corporation,* 313 U.S. 596; *New York, Chicago & St. Louis R. Co. v. Frank,* 313 U.S. 596; *Toucey v. New York Life Ins. Co.,* 313 U.S. 596; *Gray v. Powell,* 313 U.S. 596; *Baltimore & Ohio R. Co. v. Kepner,* 313 U.S. 597; *Bernards v. Johnson,* 313 U.S. 597; *Lisenba v. California,* 313 U.S. 597; *Reitz v. Mealey,* 313 U.S. 597.

There is an existing vacancy in the court below, and it may be assumed that in due time this vacancy will be filled. The writ should be granted in order that the review contemplated in the Act may be had, and the important questions settled by this Court, or the Court may desire as an alternative to remand the case to the court below for further consideration when the vacancy in that court shall be filled.

CONCLUSION

Petitioner has not had the review of the Commission's order which the Act provides. The court below, in affirming by an equal division, leaves outstanding an opinion by the majority of the court on the first hearing which is obviously erroneous and which we are entitled to assume constituted the basis of the ac-

tion by the three judges who voted to affirm. On the other hand, the opinion by Judge Garrecht, concurred in by Judge Mathews, and which we must assume also expresses the view of the third judge on the equal division, now has only the status of a dissenting opinion. This opinion makes manifest the errors in the Commission's interpretation and application of the statute, and the absence of substantial evidence to sustain the Commission's order.

We submit that this Court should grant the writ, and thus not only afford Petitioner the review which the Act contemplates, but also settle the important questions regarding the interpretation and application of this important Federal statute which are involved in this case.

Respectfully submitted,

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April 2, 1944,
San Francisco.

(APPENDIX FOLLOWS)

Appendix

AN ACT

To provide for control and regulation of public-utility holding companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Utility Act of 1935".

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not suscepti-

ble of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under cir-

cumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) When control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies of lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and wide-spread the holding com-

pany becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

* * * * * * *

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing,

directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability

imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action

of the Commission under the preceding sentence shall be by order.

(8) "Subsidiary company" of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either

through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses

(i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

* * * * * * *

POWER TO MAKE PARTICULAR EXEMPTIONS REGARDING HOLDING COMPANIES, SUBSIDIARY COMPANIES, AND AFFILIATES

SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provision or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indi-

rectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this title, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such appli-

cation. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

(d) The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes of persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

* * * * * * *

COURT REVIEW OF ORDERS

SEC. 24(a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court,

within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recom-

mendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U.S.C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

* * * * * * *

United States Circuit Court of Appeals
For the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

Upon Petition to Review an Order
of the Securities and Exchange Commission

OPINION AND DISSENTING OPINION

Before: GARRECHT, HANEY and STEPHENS,
Circuit Judges.

HANEY, Circuit Judge.

The present cause arises on a petition to review and modify, or set aside an order of the Securities and Exchange Commission.

Pacific Gas and Electric Company, petitioner, hereafter called the company, is a California corporation, and was organized in 1905. On March 23, 1912, the Public Utilities Act of California became effective, and since that date, the company could issue securities only with the approval of the Railroad Commission of California. All its securities now outstanding, have been authorized by the Railroad Commission except

15% of its common stock which was issued prior to March 23, 1912. All the company's public utility properties are located in, and its business is conducted in, the State of California.

The Public Utility Holding Company Act of 1935, hereafter called the act, became effective on August 26, 1935. Section 2(a) (8) of the act defines a "subsidiary company" as meaning:

> "(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company * * * unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and
>
> "(B) any person the management of policies of which the Commission after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies.
>
> "The Commission upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with

one or more other persons) either through one or more intermediate persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this chapter upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application."

Section 79f makes it unlawful for a subsidiary company of a registered holding company to issue or sell any of its securities except with the approval of the Commission.

On November 29, 1935, the company filed an application with the Commission for an order declaring that it was not a subsidiary company of The North American Company, a registered holding company

under the act which has held 17.71% of the company's voting stock since June 12, 1930. On September 4, 1940, the Commission directed a hearing upon such application, and on October 10, 1940, directed that such hearing commence, and it did commence, on November 12, 1940. The hearing concluded on January 16, 1941. The trial examiner on April 22, 1941, filed his report recommending that the company's petition be granted.

On July 1, 1941, the California Railroad Commission authorized the company to issue and sell 400,000 shares of its 5% First Preferred Stock, and it commenced to sell them after July 8, 1941.

On September 10, 1941, the Commission entered an order denying the company's application. At that time the company had sold 199,433 shares of the stock above mentioned. On September 18, 1941, the company filed a petition in this court to Review and Modify or Set Aside the order of the Commission, and for a stay pending such review. On the same date it filed an affidavit in support of the stay. On the following day, this court made an ex parte order staying and suspending the order and the "operation" thereof, reciting "that by Section 24 of the Public Utility Holding Company Act of 1935 said petitioner is entitled to a review of said order, and that the Court may stay the operation of said order pending review thereof".

On October 17, 1941, the Commission moved to vacate so much of the order of September 19, 1941, as provided for the stay and suspension, on four

grounds: (1) the Commission's order is not susceptible of being stayed, because of the fact, the company is a subsidiary company, and to stay the order is to have no effect other than to leave the company in the status in which the statute places it, i.e., a subsidiary company; (2) if effective to remove the company from its status as a subsidiary, the stay does not preserve the status quo because when the Commission acted, the company was a subsidiary company under the act, and a stay could not change it; (3) no great or irreparable loss or injury will be suffered by the company, if the stay is vacated, but if not, the national public interest and the interests of investors and consumers may be adversely affected; and (4) this court was without jurisdiction to stay the Commission's order because the jurisdiction to stay is for the purpose of preserving the status quo, but here, status quo, i.e., as a subsidiary company, is preserved without the stay.

Upon the hearing of respondent's motion the cause was set for hearing on the merits, and the motion taken under advisement. In view of our decision on the merits, the motion has become moot.

The Commission held that the Trial Examiner had reached his recommendation because he had misconstrued the statute. The Commission construed §2(a)(8) of the act as meaning (1) that the applicant had the burden of proving that its management and policies are not subject to the controlling influence of North American; and (2) that "controlling influence" meant something less in the form of influence on the

management or policies of a company than "control" of such company, that "control" includes the power to control, and "subject to a controlling influence" includes susceptibility to domination. It found that petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American * * *" The two rules of law mentioned above and the finding are challenged here.

As to the finding, petitioner contends, as the Board found "that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of P. G. & E." If petitioner's contention regarding the second rule of law above mentioned is correct, then reversal follows. However, if the Commission's view on the second rule of law is correct, then the question arises as to whether there is any substantial evidence to support the finding.

Section 2(a) (8) of the act provides that the Commission shall declare that an applicant is not a subsidiary company, if it finds three facts: (1) that the applicant is not controlled directly or indirectly by a subsidiary company; (2) that the application is not the medium of control of another company by a holding company; and (3) that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * *" so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the

obligations, duties, and liabilities imposed in this chapter upon subsidiary companies of holding companies. Since the statute requires findings of all three facts, in order to exempt a subsidiary as such, and since the third fact was not found by the Commission, the company is not entitled to exemption if the Commission's action regarding the third fact is sustained here.

The company contends that the language of the statute describing the third fact means "actual and existing control", rather than "susceptibility to control" as the Commission held, and since the Commission found that the evidence affirmatively showed a lack of actual and existing control, an exemption order should have been granted. The company quotes a portion of a committee report, and a part of Senator Wheeler's argument in the debates on the act. While the report sheds no light on the present question, the portion of the argument mentioned definitely supports the company's view. We think such argument must be disregarded because contrary to the plain meaning of the act. Penna. R. R. Co. v. International Coal Co., 230 U.S. 184, 198-199. If the company's argument were adopted, then the first and third facts enumerated in the statute would be identical, and the third would therefore be surplusage. In view of the rule, that a legislative body is presumed to have used no superfluous words in a statute (Platt v. Union Pac. R. Co., 99 U.S. 48, 58), and the rule that "effect shall be given to every clause and part of a statute" (Ginsberg & Sons v. Popkin, 285 U.S. 204, 208) we think the construction of the statute by the Commis-

sion which gives effect to the entire statute is correct and must be sustained.

We are thus brought to the questions regarding the findings and the evidence. The Commission found that the company had not "demonstrated" a lack of susceptibility to control by North American. The company argues that the Commission thus saddled it with a burden of proof to a clear and convincing degree. The Commission argues that the company has the burden of proving the lack of susceptibility to control. Dispute between the parties exists with respect to the question as to whether the statute creates a rebuttable presumption that the company is a "subsidiary company" or whether the company is "prima facie" such a subsidiary.

The words "burden of proof" are used in two senses: (1) the duty to prove a charge by a degree of proof such as a preponderance of the evidence; and (2) the duty to go forward with the evidence. Department of Water and Power v. Anderson, 9 Cir., 95 F(2d) 582, 583. In the first sense, "burden of proof" has no application to an administrative proceeding such as this. The statute does not specify any degree of proof required for any particular finding. The statute in question permits an application to be granted without hearing, but requires "notice and opportunity for hearing" if the application is denied or otherwise disposed of.

The statute does not even specify the party who shall have the duty of opening and closing the hearing. If such a hearing is held, it is only commonsense

which requires the company to present its evidence, since it seeks a particular declaration. When the evidence is all in, the Commission considers the whole body of evidence, both pro and con, and finds what the ultimate facts are unrestrained by any rule regarding burden of proof, as used in the first sense. The sole restraining rule is that the fact found must be supported by substantial evidence, as is provided in §24(a) of the act, and if such fact is so supported, it is conclusive, whether it is supported by what someone other than the Commission thinks is a *preponderance* of the evidence or not.

Since the company is, by the terms of the act, a "subsidiary" company and can be relieved of that status only by an order of the Commission, and since such an order may be made only when the Commission finds three facts, in a broad sense, it is natural to say that the company has the "burden of proof". However, when those words are used, neither of the technical senses, mentioned above, is intended. What is meant is that the company must present substantial evidence which convinces the Commission as to the three facts mentioned. We do not understand that anything different was meant in Securities and Exchange Com'n v. Sunbeam Gold M. Co., 9 Cir., 95 F(2d) 699, 702 and Detroit Edison Co. v. Securities Exchange Commission, 6 Cir., 119 F(2d) 730, 739.

The company contends that the finding of the Commission that the company "has not demonstrated that its management and policies are not subject to the controlling influence of North American" is not sus-

tained by substantial evidence. The Commission relied on facts and made inferences to support its finding, as follows:

(a) North American owns 17.71% of the voting stock in petitioner. The second largest stockholder holds 1.72% of the voting stock. The rest of the stock is owned by corporations and individuals, scattered widely. Of the total voting stock 47.9% is held by non-residents. The Commission said:

> "* * * It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract be offset by the voting power which the local management could attract. It cannot be denied that, in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes."

(b) North American's holdings have represented from 25% to 30% of the total votes cast at stockholders' meetings from 1931-1940. The Board said:

> "* * * First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually

impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 25 to 30% of the votes cast at stockholders' meetings, and, by virtue of its stockholdings, North American had the power to break a quorum at all but two stockholders' meetings since it became applicant's largest stockholder; if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually ⅓ of applicant's common stock gives North American an effective veto power over any corporate action requiring the consent of ⅔ of each class of stock —e.g., mergers and consolidations."

(c) Petitioner was organized in 1905 and now represents the consolidation of over 400 separate companies. It formerly purchased power from Great Western Power Company, which was organized in 1906. During most of the latter's existence, 90% of its revenues came from territory in competition with petitioner. Several unsuccessful attempts were made by petitioner to acquire the properties of Great Western between 1911 and 1925. Petitioner's present president is one Black, formerly an employee of Great Western. North American acquired control of Great Western in 1925, and, in 1927, Black went to New York as vice president of North American—his principal duties at that time being to keep in touch with and assist Great Western and its subsidiaries.

In 1930, following negotiations begun in the previous year between Black and petitioner's then president, resulted in the acquisition by petitioner of the

securities held by North American in Great Western and its subsidiaries. It was orally agreed that North American would not interfere with petitioner's management, that North American would be entitled to three members on petitioner's board of directors and one member on its executive committee. Black became a member of petitioner's board of directors as North American's representative.

Regarding these facts, the Commission said:

> "It is wholly untrue to characterize North American's relationship to P. G. & E. as merely that of a stockholder holding an investment interest. It now has two of its representatives on P. G. & E.'s board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the 'right' to such representation on applicant's board of directors and executive committee is, we think, of material significance. We find some significance, too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American; no such reports are sent to any other stockholder."

(d) Regarding the facts mentioned under (c), the Commission said:

> "Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his ap-

pointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to P. G. & E. and as a result of which North American acquired its interest in P. G. & E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North American's interest. It is also significant that since Black became president of P. G. & E., no effort has been made to North American to have representation in the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of P. G. & E."

The facts, as thus stated, are not disputed. It is contended that the inferences drawn are contrary to the evidence. Such evidence was, of necessity, opinion evidence, because the facts inferred by the Commission were events which *might* happen, not what actually happened. In other words, the evidence relied on consisted of predictions that specified events *would not* occur, and did not consist of facts that such events *could not* happen. Manifestly, the Commission was not bound to accept the predictions as facts. As said

in Labor Board v. Link-Belt Co., 311 U.S. 584, 597: "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts * * * The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony". The rules quoted are applicable here.

Regarding the inferences made, the only question which we may consider is one of law, that is, were the inferences made reasonable? We think a reasonable man could reach the conclusion the Commission reached, and therefore the finding must be sustained.

The company also contends that the Commission did not consider other evidence which tended to show that North American had not attempted to dominate the company in the past. However, as quoted above, the Commission found specifically in accordance with such evidence. In view of what we regard as the proper construction of the words in the statute, "subject to a controlling influence", a finding for the company is not compelled by the fact that North American had not dominated the company in the past. Congress may prevent an evil from occurring, and need not wait till the damage is done before acting. Compare: Edison Co. v. Labor Board, 305 U.S. 197, 222. We think the construction of the statute approved here, carries out what we think Congress regarded as a preventive measure.

After finding that petitioner had failed to sustain its burden of showing that it was not subject to the

controlling influence of North American, the Commission held that it was necessary or appropriate in the public interest or for the protection of investors or consumers, for petitioner to be subject to the act. It stated in this connection that petitioner "is a company with stated assets of almost $800,000,000 serving in excess of 1,500,000 customers; its securities are listed and traded on national security exchanges and are owned by investors throughout the country". This finding arises by reason of §2(a) (8) of the act quoted above.

It is obvious that what is "necessary or appropriate in the public interest" is a question for the Commission to decide. Section 1(b) of the act enumerates a number of evils existing between holding companies and their subsidiaries. Section 1(c) provides in part:

> "* * * it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted to meet the problems and eliminate the evils as enumerated in this section * * *"

The company contends that this quoted provision is the standard by which the Commission is to be guided in determining what is "necessary or appropriate in the public interest" and that there is no showing of the existence of present evils, or of "such a controlling influence as would enable the holding company to bring about the evils enumerated in the Act".

We think it is unnecessary to decide this question, because of the construction of §2(a) (8). The words

"so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies", which we will refer to as the necessity clause, are such that the meaning of the entire sentence is not clear. We think there are three possible constructions of the entire sentence.

The narrowest construction of the sentence arises when the necessity clause is construed as modifying all three of the conditions mentioned in (i), (ii) and (iii), that is, e.g., that the control mentioned in (i) must be of a kind which makes it necessary or appropriate for the applicant to be held to be subject to the act. The Commission, in In the Matter of Wisconsin Valley Improvement Company ..... S.E.C. ....., found that the applicant was subject to the controlling influence of holding companies, but that because of "the character of applicant's business and the nature and extent of statutory and state commission regulation" it was not necessary or appropriate to make the act applicable to the applicant. That decision cannot be said to be unreasonable. It seems as reasonable to say that there might be actual control under (i) and yet the same factors would prevent the control from being exercised.

A second, and more liberal construction, insofar as it gives the Commission broader powers, arises when the necessity clause is considered as modifying only the condition mentioned in (iii). In other words, if

there is control, specified in (i) or applicant is the intermediary through which such control is exercised, then the application should be denied, regardless of whether such control makes it necessary or appropriate that the applicant be held to be subject to the act, and that it is only when the applicant is subject to a controlling influence, that there must be necessity or appropriateness in the public interest for applicant to be subject to the act. Considered superficially from the standpoint of sentence structure the second construction seems to be correct. However, even though there is no control under (i) it may be that such control cannot be exercised, or the control may be regarding a thing which could not possibly harm anyone. In either event, it seems illogical to say that the necessity clause modifies the controlling influence under (iii) but not the control under (i).

A third construction, and the one which gives to the Commission the broadest powers, arises when the necessity clause is not considered as a modifying clause at all, but as a fourth condition. As thus construed, before the application could be granted it would be necessary for the Commission to find that there was no control under (i), that applicant was not an intermediary through which such control might be exercised under (ii), that applicant was not subject to a controlling influence under (iii), and that it was not necessary or appropriate in the public interest to make the act applicable to applicant. If the contrary of any of the four conditions thus enumerated were found by the Commission, then the appli-

cation would have to be denied. In other words, if the Commission found control under (i), or that applicant was the medium of control under (ii), or that applicant was subject to a controlling influence under (iii), the application would have to be denied regardless of whether there was necessity or appropriateness under the necessity clause; on the other hand, if the Commission found that none of those three conditions were present, it could still deny the application on the ground that there was a necessity or appropriateness that the act be held to be applicable to the applicant under the necessity clause.

We believe the latter construction is correct. Congress thought that the ownership by one corporation of 10% or more of the voting securities of another sufficient to declare the latter corporation to be a subsidiary, regardless of any other factor. It became a subsidiary not because of "control", or because it was the medium of control, or because it was subject to a "controlling influence", but because of the ownership of at least 10% of its stock. Congress recognized that harm might result to the public when there was such ownership, regardless of whether any of the three factors were present. It did not make as a condition to regulation any of these three factors. It is unreasonable to say that Congress intended to exempt from regulation when those three conditions only were not present. It seems apparent that harm might result to the public when none of such factors was present—that is the harm might spring from

other factors. Such factors would be covered by the fourth condition, because of its generality.

This view is not contrary to the result of the Commission's holding above mentioned. It is inconsistent to say that A is subject to the controlling influence of B, when B is prevented from exercising it. In such event, A is not subject to a controlling influence because B cannot in fact exercise it.

The remaining portion of §2(a) (8) of the act speaks of the "conditions specified in clause (i), (ii) and (iii)". It does not say that there are only three conditions, but makes it clear that the conditions referred to are those "regarding the affiliations or intercorporate relationships". The fourth condition relates to the conditions between the subsidiary and the public.

As thus construed, the application was properly denied regardless of whether the finding under the necessity clause was sustained by substantial evidence or not.

The company suggests that some constitutional questions are involved, but it does not appear that such questions were presented to the Commission, and therefore we cannot consider them. See §24(a).

The petition to review is denied.

Circuit Judge Garrecht filed a dissenting opinion, which is found at pages 1718-1738 of the record, and which is here omitted as the substance thereof is contained in his dissenting opinion, infra, on the final disposition of the case.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

ORDER AFFIRMING ORDER OF SECURITIES AND EXCHANGE COMMISSION

Order of Securities and Exchange Commission herein affirmed by an equally divided Court.

United States Circuit Court of Appeals
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No. 9918

PACIFIC GAS AND ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION,
Respondent.

DISSENTING OPINION AND CONCURRENCE

GARRECHT, Circuit Judge, dissenting:

I dissent from the per curiam decision entered herein denying the petitioner's application, for the reasons hereinafter stated.

This cause has been pending before the court upon a rehearing en banc. Former opinions of this court herein are found in 127 F.2d 378, et seq.

The issues arise on the petition of Pacific Gas and Electric Company to review and modify or set aside an order of the Securities and Exchange Commission, which denied petitioner's application for an order, pursuant to Section 2(a) (8) of the Public Utility Act of 1935 (49 Stat. 803, 807) declaring it to be not a subsidiary of the North American Company, a registered holding company owning more than 10% of the petitioner's voting stock.

Pacific Gas and Electric Company, petitioner, in the evidence and also herein sometimes referred to as P. G. & E., is a California corporation, organized in 1905. On March 23, 1912, the Public Utilities Act of California became effective, and since that date the Company could issue securities only with the approval of the Railroad Commission of California. All its securities now outstanding, have been authorized by the said Commission except 15% of its common stock which was issued prior to March 23, 1912. All the Company's public utility properties are located in, and its business is conducted in, the State of California.

The Public Utility Act, hereinafter called the Act, became effective on August 26, 1935 (49 Stat. 803). The portions of said Act pertinent to this discussion are as follows:

> "Sec. 2(a) (8) 'Subsidiary company' of a specified holding company means—

"(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

"(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

"The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not sub-

ject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. * * *"

Section 6 of the Act (49 Stat. 814) makes it unlawful for a subsidiary company of a registered holding company to issue or sell any of its securities except with the approval of the Commission.

It appears that North American Company, hereinafter called North American, owns, controls and holds with power to vote, 17.71% of petitioner's outstanding voting securities and is therefore, by statutory definition, a subsidiary of North American, unless declared otherwise by the Commission. Following the provisions of the Act, petitioner, on November 29, 1935, sought by appropriate petition to bring itself within the exemptions provided in the Act by alleging

and offering to establish that (1) it is not controlled, directly or indirectly, by North American; (2 it is not an intermediary company through which control of another company is exercised; and (3) its management or policies are not subject to such a controlling influence, directly or indirectly, by North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers, that it be subject to obligations, duties and liabilities imposed in the Act upon subsidiary companies.

On September 4, 1940, the Commission directed a hearing upon such application and on October 10, 1940, directed that such hearing commence. It began on November 12, 1940, and was concluded on January 16, 1941. The hearing was had before a trial examiner. Although there was no real dispute as to the facts as set forth in the trial examiner's report, both counsel for petitioner and counsel for the Commission filed with the trial examiner separate requests for specific findings.

The trial examiner on April 22, 1941, made his report and findings of fact. He found and concluded that petitioner was entitled to the order which it sought. Thereupon counsel for the Commission filed exceptions to the report, and the matter was presented to the Commission upon briefs and oral argument and thereafter on September 10, 1941, the Commission entered its order denying petitioner's application. The case was brought to this court upon petition to review and modify or set aside said order.

The Commission, in concluding its findings and opinion, said:

> "* * * we hold that applicant has not demonstrated that its management and policies are not subject to the controlling influence of North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed by the Act upon subsidiary companies of holding companies.
>
> "We desire to emphasize that our holding in this respect is not to be taken to mean that any stigma is cast upon applicant or that we think that applicant is not properly regarded as a California corporation. Nor do we mean to indicate that the influence of North American necessarily is or will be improperly exercised. The only question which we have decided is that, in the circumstances of this case where the statute presumptively requires that P. G. & E. be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that P. G. & E. is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company."

Further, the Commission said:

> "* * * There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we

cannot agree with the conclusions reached by the trial examiner. Our reasons for this decision are as follows:

"First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of demonstrating that its management and policies are not subject to the controlling influence of North American. * * *"

We call attention to the fact that the findings and conclusions of the Commission are based on inference and surmise in many instances in absolute conflict with the testimony, which was uncontradicted and not discredited. The Commission made inferences to support its findings, as follows:

North American owns 17.71% of the voting stock in petitioner. The second largest stockholder owns 1.72% of the voting stock. The rest of the stock is owned by corporations and individuals, scattered widely. Of the total voting stock 47.9% is held by non-residents. The Commission said:

"* * * It is apparent that if a vital and substantial conflict arose between applicant and North American and matters came to the point of a proxy fight, the holdings of North American represent a tremendous advantage in any such fight. Counsel have argued as to the possible outcome of such a proxy fight. We need not speculate here as to whether North American's 17.71% of voting power, plus the votes it could attract would be offset by the voting power which the local management could attract. It cannot be denied that,

> in any event, North American's holdings would make it a formidable opponent. And the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes."

North American's holdings have represented from 25% to 30% of the total votes cast at stockholders' meetings from 1931-1940. The Commission said:

> "* * * First, so long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management, make it virtually impossible for any other interest or group of interests to elect a majority of the directors. Second, North American's votes have represented 25 to 30% of the votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum of all but two stockholders' meetings since it became applicant's largest stockholder; if it had chosen to do so, no business could have been transacted at such meetings. Third, the ownership of virtually ⅓ of applicant's common stock gives North American an effective veto power over any corporate action requiring the consent of ⅔ of each class of stock—e.g., mergers and consolidations."

Petitioner's present president is one Black, formerly an employee of Great Western Power Company. North American acquired control of Great Western in 1925, and in 1927 Black went to New York as vice president of North American—his principal duties at

that time being to keep in touch with and assist Great Western and its subsidiaries.

In 1930, following negotiations begun in the previous year between Black and petitioner's then president, the petitioner acquired the securities held by North American in Great Western Power Company and its subsidiaries. It was orally agreed that North American would not interfere with petitioner's management, that North American would be entitled to three members on petitioner's board of directors and one member on its executive committee. Black became a member of the petition's board of directors as North American's representative. Regarding these facts, the Commission said:

> "It is wholly untrue to characterize North American's relationship to P. G. & E. as merely that of a stockholder holding an investment interest. It now has two of its representatives on P. G. & E.'s board of directors, and by cumulating its votes it could elect at least three directors. Moreover, under the agreement made at the time of the Western Power Deal, it could at any time have a representative elected to applicant's executive committee. Against the background of the other facts we have discussed, the fact that North American has been given the 'right' to such representation on applicant's board of directors and executive committee is, we think, of material significance. We find some significance, too, in the frequent and detailed reports of every phase of applicant's operations sent by applicant to North American; no such reports are sent to any other stockholder."

Further, the Commission said:

> "Nor can we disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice president of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to P. G. & E. and as a result of which North American acquired its interest in P. G. & E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North American's interest. It is also significant that since Black became president of P. G. & E., no effort has been made by North American to have representation in the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances, and, in his dealings with North American, would treat it as merely a large stockholder of P. G. & E."

Admittedly, P. G. & E. is not controlled by North American and is not an intermediary company, therefore clauses (i) and (ii) of Section 2(a) (8) of the Act are not here involved. The only issues arising under clause (iii), which requires petitioner to show

that "the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * * as to make it necessary or appropriate in the public interest * * * that the applicant be subject to the obligations, duties, and liabilities imposed in this title * * *." Although the initial burden is on petitioner to prove to the Commission that its management and policies are not subject to North America's "controlling influence", the Commission's function is to draw adequate and fair inferences from the evidence. This the Commission failed to do.

It is an admitted fact that petitioner's utility properties are all located, and its business is conducted in the state of California. In this regard the Commission said: "On the basis of the record before us we find that applicant and all of its subsidiary companies are predominantly intrastate in character and carry on their business in California, the state in which each of them is organized, and that applicant is predominantly a public utility company whose operations as such do not extend beyond the State of California. * * *"

Petitioner is subject to the public utilities act of said state and can issue securities only with the approval of the California Railroad Commission. This state commission by its representatives appeared at the hearing and presented a statement, which was received by the Commission, showing the manner and extent of its regulation of appellant, and in this document the California Railroad Commission stated that

it was "aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company.

While the Commission concedes that the evidence shows there is no control of petitioner by North American, the Commission maintains that it may still deny petitioner's application upon the assumption or supposition that merely ownership of 17.71 percent of the stock of petitioner by North American renders it subject to the controlling influence of such holding company despite the fact that there never has been any exercise of control or any effort in that direction and in the face of the evidence of the officers of North American that it holds the stock as an investment only and that there is no intention to exercise any control over petitioner and the further evidence of the officers and management of petitioner that they would not permit such control.

The Question of Control

Referring to the question of control as indicated by stock ownership, the court in Electric Bond & Share Co. v. Sec. & Exch. Com., 2 Cir., 92 F.2d 580, 592, said:

> "* * * Congress elected the element of stock ownership, a factor most usually indicative of control, as prima facie evidence of control. The burden of proof, which is cast upon the utility company to prove otherwise, is not onerous. Judi-

> cial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's finding be not supported by substantial evidence. * * *"

That case was subsequently affirmed by the Supreme Court of the United States under the same title, 203 U.S. 419. In the latter case the Department of Justice, for the Securities and Exchange Commission, filed an able and carefully prepared brief, discussing various sections of the Act. Upon the subject of stock control, because of the clearness of the reasoning and aptness of application to the present discussion, I quote from the brief the following (Br. for Resp., p. 6, of Apx. A):

> "A holding company by express definition * * * is a company which actually controls operating companies, and not a company which merely has an investment in operating companies. Conversely, a subsidiary company, by express definition * * * is a company actually controlled by the holding company, and not simply a company in which the holding company has a substantial interest. Ten percent voting stock ownership creates a presumption of control in order to facilitate administration of the Act and to prevent ready evasion. That presumption, however, can readily be rebutted by either the putative holding company or the putative subsidiary company (Section 2(a) (7) and (8)) upon a showing that the company does not in fact exercise control. * * * No true investment company—i.e., a company which does not control the operating companies in which it invests—is in any manner affected by it."

The following quotation is also from that brief (Br. for Resp., pp. 197-198):

> "* * * a company may readily prove if such be the fact that it does not possess control. Such burden of proof is not onerous because every company has completely within its own organization full knowledge and control of all the facts and the evidence * * * Judicial review is provided to guard against any arbitrary action on the part of the Commission, and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (Section 24(a)). * * *"

With these declarations of the court and from the Commission in mind let us have a look at the testimony as found in the record and which was not contradicted.

The present board of directors consists of five directors who are officers and full-time employees of petitioner, eight directors who are prominent San Francisco business men, and two directors, Fogarty and Freeman, who are admittedly representatives of North American. Neither of these two North American representatives is a member of the executive committee.

All directors and principal officers, with the exception of the two directors who are officers of North American, are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with Cali-

fornia enterprises, and have no substantial interest in any eastern concern, business or corporation whose business is not principally conducted in California. During the entire period of petitioner's existence the members of the board of directors, with few exceptions, have been residents of San Francisco and vicinity, and have owned and do own and represent substantial stock interests in petitioner, and the fathers of four directors (directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon and W. W. Crocker) were active in the affairs of predecessor companies. All of the directors, with the exception of Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood.

The directors, other than those who are active executives of the Company, and excepting Fogarty and Freeman, are prominent in other business affairs in San Francisco and vicinity; two are chairmen of boards of local banks, one is president of a third bank; all are directors of numerous corporations, including other utilities, and several are officers or trustees of educational or charitable institutions.

Each of petitioner's local directors to whom the question was propounded, namely, Messrs. Miller, McKee, Crocker, Chickering, Livermore, Coghlan, Palmer, Nichols, McIntosh, Wishon and Black, testified that it was his opinion that North American could not if it attempted to do so and its attempts were resisted by the local directors, secure sufficient

proxies to obtain a majority of the stock represented at a stockholders' meeting.

Mr. Black testified that he would oppose any attempt by North American to control or influence the management or policies of the petitioner with "every resource at my command" and that he was sure they would not be successful in a proxy fight because:

> "This company has a rather unique position in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 per cent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.
>
> "Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the side of the company in any such fight."

Director Fogarty, the representative of North American on the board, testified that the manage-

ment or policies of petitioner were neither directly or indirectly subject to the controlling influence of North American. Nor had that company ever attempted to influence or control the management. He also said that as a practical matter it would not be possible. Mr. Freeman, the other representative, corroborated this view. Mr. Fogarty never attended a directors' meeting. This is also true of Mr. Freeman, who has never been in California.

The testimony of all of these witnesses is not contradicted.

With the exception of Fogarty and Freeman the evidence clearly indicates that the other directors, most of whom were prominent business men of San Francisco and vicinity, were tough-fibered individuals who could not be dominated by outside influences. That was the substance of the testimony and so far as these persons are concerned this testimony admittedly is uncontradicted. In determining the question of "controlling influence" the evidence must be considered and this the Commission did not do. It was simply waived aside as of no importance whatever.

It is probably worth remarking in this connection that North American has never solicited proxies; in fact, its officers or representatives have never voted its own stock, its proxies having been sent to other stockholders. If there existed any apprehension that North American might seek proxy control, the Commission has the power to prevent North American from soliciting any proxy.

To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose. Thus, the selection of James B. Black as president of appellant upon the unexpected death of Mr. Hockenbeamer, who had been president for many years, is pointed to as unmistakable proof of the evil influence exerted by North American, because at the time of Black's appointment he was the vice-president of North American.

It must be admitted that Black probably was as well qualified for the position as anyone anywhere; his career is altogether a notable one. His personal, professional, and administrative achievements are detailed at some length in the record, from which I summarize briefly: He came with his parents to California at the age of twelve and has lived in San Francisco and vicinity ever since, with the exception of a short period when he resided in New York and served as vice-president of North American. He was educated in the schools of Oakland and San Francisco and at the University of California, from which he was graduated in 1913 in engineering. After graduating he was employed as a service inspector by City Electric Company, then a subsidiary of Great Western operating in San Francisco. About 1915, the properties of City Electric Company were taken over by Great Western, and Mr. Black successively engaged in sales, sales engineering, and administrative work in its San Francisco division. Later he became division manager, assistant general agent and general

sales manager, and acting general manager, and in 1922 was made vice-president, general manager and a director of that company. After North American acquired control of Western Power Corporation, Mr. Black retained these positions until February, 1927, when he went to New York at the invitation of North American as one of its vice-presidents.

His selection as president of Pacific Gas and Electric Company was entirely the result of the action of the California directors of that company, many of whom were acquainted with Black's capabilities. The fact that he was a Californian, that he was familiar with some of the properties of the company, and had wide experience were deemed qualifications, and his selection met with the unanimous approval of the board of directors. No suggestion of Mr. Black's election was made by anyone in North American; his selection was not anticipated by the officers of that company, to whom it was a surprise. There is no evidence in the record indicating that North American played any part in the choice of Black as president of the petitioner, other than to consent when the California directors asked permission to offer the position to him. When Black accepted the position he assured the California directors that he would sever all connections with North American. He has never sought or received the advice, approval, or recommendations of North American or its officers on any dividend rate, salary, refinancing, or any other pending matter. There is no difference between the information received by North American or in the relations with

petitioner since Black became president and the situation existing before that time.

Not only did the Commission disregard the uncontradicted evidence substantiating that there was no "control" or "controlling influence", it also disregarded a specific and important instance revealed by the evidence which very persuasively negatived such control. At one of the meetings of the board of directors of Pacific Gas and Electric, at which the question of declaring a dividend was up for consideration, it was voted that the dividend for that year be declared at the rate of six per cent instead of the usual eight per cent. The representatives of North American requested the board to reconsider this action, but it did not accede to the request.

Notwithstanding the uncontroverted evidence to the contrary the Commission went off into the realm of speculation as to what might happen if North American should undertake to engage in a proxy fight with appellant's existing management for control, and it determined that the mere fact that there might be a strong possibility (based likewise on conjecture) that North American could prevail was itself proof of "susceptibility" to a controlling influence.

There are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to "events which might happen" but

"not what actually happened". As approving these methods the Commission quotes an excerpt from Labor Board v. Link-Belt Co., 311 U.S. 584, 597, as follows: "Congress entrusted the Board, not the Courts, with the power to draw inferences from the facts. * * * The Board, like other expert agencies dealing with specialized fields * * * has the function of appraising conflicting and circumstantial evidence, and the weight and credibility of testimony." But here there is no conflicting evidence to appraise, and as to weight and credibility of testimony it must be noted that the witnesses who testified contrary to the findings were outstanding men of affairs in California, and they were not contradicted or impeached, and no reason appears in the record why they should be discredited.

According to the Commission petitioner was required to "demonstrate" non-control or influence by North American. The Act does not require any such mathematical extreme which excludes possibility of error. 23 C.J. 9. It is sufficient if such showing is supported by substantial competent evidence which is not contradicted. Due process requires that the competent evidence adduced be fairly considered by the Commission on its merits. As was said by Justice Brandeis in speaking for the court in the Chicago Junction Case, 264 U.S. 258, 265, "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence

is arbitrary action." In Morgan v. United States, 298 U.S. 468, 480, Chief Justice Hughes said:

> "* * * The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. * * *"

This court is not called upon to determine the credibility of witnesses or to reach a conclusion upon substantially conflicting facts. Indeed, no such question is presented here, since the Commission has said in its opinion that——

> "There is almost no dispute as to the facts in this case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner",

who found that Pacific Gas is not in fact controlled by, or subject to the controlling influence of, North American.

The Commission relies strongly on Detroit Edison Co. v. Securities and Exchange Commission, 119 F2d 730; Public Service Corporation of New Jersey v.

Securities and Exchange Commission, 129 F2d 899; and Hartford Insurance Company v. Securities and Exchange Commission, 129 F2d 794. A glance at these cases will show how utterly different were the fact there presented.

In the Hartford case, 129 F2d 794, two affiliated holding companies owned 21.98 percent of the petitioner's voting stock. Not only was the president selected from one of the subsidiaries of the holding company but he frequently had advice from his former associates and secured help from the holding company's engineers in effecting changes in the petitioner's business methods. Petitioner for years submitted a preliminary draft of its annual budget to the holding company. It obtained much of the gas that it sold to its customers through some community of interest arrangement with subsidiaries of the holding company. The cost of the gas that petitioner so purchased prior to 1940 amounted to 58 percent of all its regular operating expenses.

In the Public Service Corporation of New Jersey case, 129 F2d 899, the court pointed out that the petitioner was organized pursuant to plans submitted by the holding company which not only subscribed for 25 percent of its original stock but also underwrote part of the stock issued.

Further, under contract it supplied petitioner with engineering, purchasing and general advisory service.

The president of Public Service Corporation testified that he could not have become president of the

corporation against the wishes of the holding company and that no plan of the kind contemplated in its organization could have been accomplished without the affirmative approval of the holding company. See Public Service Corp. of New Jersey v. S. & E. C. Release No. 2998, Sept. 15, 1941.

There were many other instances of interlocking relationships, indeed, the record was so replete with evidence of the participation of the holding company in Public Service Corporation affairs that the Court passing on the appeal was moved to remark, 129 F2d 901 that the evidence supporting the findings was so conclusive and the contentions of petitioner were so wholly lacking in merit as to border on the frivolous.

Probably the case the Commission most relies upon is the Detroit Edison Co. v. Securities Exchange Commission, 119 F2d 730, as this case is cited in the Commission brief not fewer than nine times.

It is submitted that the facts in the case are so different from the one before us that it cannot be considered an authority to support the action of the Commission here. In the Detroit Edison case, by agreement with two existing companies, a syndicate organized by North American acquired their stock and organized the Detroit Edison Company. Its officers and directors were all designated by North American. On behalf of its syndicate North American then offered all of the stock of the corporation and agreed to finance and furnish other assistance to the new company on certain terms. By the deal the syndicate

acquired three million dollars of Edison's first mortgage bonds and fifty thousand shares of its stock. The Edison then began operations. Thereupon the syndicate dissolved, and North American retained more than 10 per cent of petitioner's outstanding voting securities. The record shows that the North American dominated the board of directors through the years, and at the time of the hearing the majority of directors still had affiliations with North American. There were other intercompany relationships too extended to detail here, but referred to in the opinion and which had been discontinued not long before the hearing. From these facts it was concluded that in the light of Edison's origin and the unbroken continuity of North American's officers, directors, and designees on its board, and its absolute domination for many years by the parent company, it was not entitled to an order granting exemption from the statute. In summing up the situation the court said:

> "The fact that the North American Company had abandoned some of the characteristics of 'controlling influence' over the petitioner at the time of the hearing, did not require the Commission to disregard prior interrelated activities. There is no showing that its latent power to resume such control had been extinguished. The relationship is such that they may enter into similar activities in the immediate future. * * *
>
> "* * * Giving due weight to the past transactions of petitioner with the North American and the continuing opportunity for the resumption of such activities and the extent of the petitioner's

business and the widely scattered ownership of its stock, the Commission committed no error in denying petitioner exemption from the present Act." (119 F2d at pp. 739-740.)

All the evidence in the case before us shows a complete absence of such relationships and of any control throughout the period since North American became an owner of certain stock of Pacific Gas and Electric Company because of the transfer by it of certain utility properties that it had theretofore owned.

It is significant too that those incidents of relationship which are referred to as indicative of controlling influences in practically all of the decisions which have been cited to us by the Commission are notably absent in this case as the trial examiner pointed out:

"There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930. (The agreement by which P. G. & E. acquired the properties of North American in California.)

"Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant.

"There has been no exchange of operating information between the Applicant and the admitted subsidiaries of North American.

"There have never been any intercompany loans or financial transactions between the Applicant and North American or its subsidiaries.

"All of Applicant's major acquisitions and construction projects have been and are decided

upon, budgeted and carried out within the P. G. & E. organization and entirely independent of North American at all stages.

"North American's organization has never assisted Applicant in the preparation of any Registration Statements, nor has its Secretarial Department ever assisted Applicant in any manner.

"Applicant and North American do not employ the same accountants, attorneys or engineers.

"Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition. North American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon.

"No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other."

The Commission admits that the record does not reveal any past attempt by North American to interfere with its management or policies. It is likewise conceded that there is no evidence of actual control, nor, as has been shown, is there any substantial evidence from which any legally sound inference can be drawn that there ever was any effort whatsoever by North American to subject appellant to any controlling influence. Nor is there any testimony in the record from which any fair inference can be drawn that petitioner was subject to the controlling influence of North American.

SUBJECT TO A CONTROLLING INFLUENCE

Petitioner makes the point that the Act requires some present controlling influence, not a speculative future influence, as ground for denial of an application for a declaration. The term "subject to a controlling influence" means that approximately as of the time of the hearing the controlling influence must be actually existent even though not actively executed and that some mere potential or possible or speculative influence is not sufficient. The statute seems to imply such an interpretation. It reads "subject to a controlling influence". The word "subject" suggests some present existing quiescent controlling power that could be rendered active at will. This may also be inferred because in this very Section 2(a) (8) it is provided that even where the Commission has acted favorably and made an order of exception this finding of the non existence of "controlling influence" may be only conditional and temporary, and "The Commission, upon its own motion or upon application, shall revoke the order * * * whenever in its judgment such modification is necessary" to effectuate the law. These provisions indicate that the Congress intended to cover a situation where there might be some "susceptibility" of such influence in the future but where none presently existed and that it did not intend that a declaration should be withheld in the absence of present active controlling influence.

From the discussion in Congress at the time the Act was under consideration and as well from the fair and ordinary meaning of the language, the phrase

"subject to a controlling influence" does not mean, as the Commission found, that appellant was required to "demonstrate" that its management and policies were not "susceptible to control" by North American. "Subject to a controlling influence" is not the equivalent of "susceptible to a controlling influence". "Susceptible" and "subject" are not interchangeable or synonymous terms. The word "susceptible" connotes an especial liability to mental and emotional impressions. Advisedly that expression was not used in the statute. But the word "subject" is used, and here it occurs in relation with "control", and in that sense it must correctly be continued as meaning under the power or dominion of another. It is synonymous with subordinate, inferior,[1] "To control" means to exercise a restraining or direct influence over; to dominate; regulate; hence to hold from action; to curb; to subject.[2] Moreover, "controlling" means the act or fact of exercising restraining influence over, which conveys the idea of a continuing process. Thus, "subject to a controlling influence", as stated in the statute, is not the same thing as "susceptibility" to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute as above noted the Commission is in a position to act at once if ever

[1]See Webster's New International Dictionary.

[2]Ibid.

the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the facts showed a lack of any actual and existing control or controlling influence.

It is also clear that the vague, artificial tests here employed are not sanctioned by the Act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence.

The facts presented to the Commission and all reasonable inferences, deductions, and conclusions to be drawn therefrom, considered in their entirety and in relation to one another, negative the findings of the Commission. The inferences which are suggested as supporting the order of the Commission are based on mere suspicion. In Labor Board v. Columbian Co., 306 U.S. 292, 299-330, Mr. Justice Stone said:

> "* * * But as has often been pointed out, this, as in the case of other findings by administrative bodies, means evidence which is substantial, that is, affording a substantial basis of fact from which the fact in issue can be reasonably inferred. * * * Substantial evidence is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. 'It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' * * *"

In vesting the Commission with the duty of ascertaining "control" or "subject to a controlling influ-

ence" of one company by another Congress did not imply that a potential facility to exercise control was sufficient to establish such controlling influence. If this alone were sufficient the Congress would not have made provision for the exemption.

The legislative history of the Act corroborates this view. In the course of the debate on the bill, Senator Wheeler, chairman of the Committee in charge, said, with reference to the 10 percent clause (79 Cong. Rec., p. 8397):

> "That is only prima facie evidence; but even if they hold 40 percent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill."

Again, Senator Wheeler said (79 Cong. Rec., p. 8439):

> "No, Mr. President. Let me make a distinction. The Senator from Delaware said: 'Suppose I own 10 percent of the stock of some company.' Unless I control that company I am not a holding company under the terms of this bill. The mere ownership of the 10 percent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company. The Senator may overlook the factor of control. He may show that he actually does not control the company in

which he owns 10 percent of stock, and if he does not have control he is not a holding company."

Neither the Commission nor the Court is warranted in departing from the purposes expressed because of any doubts that may exist as to the wisdom of following the course which Congress has marked out.

There must be some substantial evidence before the Commission that there exists such a controlling influence as would enable the holding company to bring about the evils enumerated in the Act. There is no such showing in this case.

On the contrary, the evidence affirmatively shows, as the examiner in his findings pointed out, the absence of the evils which the Act was designated to prevent.

Pacific Gas and Electric Company never had any financing, purchasing, service, management, construction or similar contracts with North American or its affiliates.

North American has never had anything whatever to do with accounting practices and rate dividends and other policies of Pacific Gas and Electric Company.

There are and have been no management, service, sales, construction or other contracts in existence, nor has there been, nor is there any evidence of control or influence exerted or attempted to be exerted over Pacific Gas and Electric Company's finances, management, and policies.

Present prospective investors in Pacific Gas and Electric securities can obtain information necessary to appraise its financial condition and earning power. It issues a comprehensive annual report and keeps its accounts in accordance with a uniform system prescribed for gas and electric corporations by the California Railroad Commission, all of which are open to the public. During all the years North American has been a stockholder in the Pacific Gas and Electric Company, it has never had any transactions with Pacific Gas and Electric Company other than the original purchase from it in 1930.

There has been no increase or extension of North American's interest in Pacific Gas and Electric, and its relative voting power is less than it was immediately after it became a stockholder in 1930. The list enumerating the absence of many evils usually relied upon by the Commission in these cases is extended at length in the findings of the examiner, which have not been questioned. They are too numerous to detail here.

Moreover, under the Act the Commission now actually exercises over North American, as a registered holding company, such control as is itself sufficient to prevent the occurrence of any transaction or dealing between the companies as would violate the Act. While no such transactions have ever occurred and the evidence that they would not occur is uncontradicted, still the Commission by virtue of this control over North American can at once prevent them should they be proposed. Indeed, the Commission has already

made an order which was affirmed by the Circuit Court of Appeals for the Second Circuit, North American Company v. S. & E. C., 133 F2d 148, under which North American is required to dispose of its stock in petitioner.

To sustain the Commission on the record here would require us to hold, as the court did on the first hearing, that its determination of what is necessary in the public interest is a matter within the uncontrolled discretion of the Commission. This is not the proper interpretation of the statute and counsel representing the Commission do not so contend.

The order of the Commission not being supported by substantial evidence should be set aside.

MATHEWS, Circuit Judge, joins in this dissent.

No. 55

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CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1944

PACIFIC GAS & ELECTRIC COMPANY, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Pacific Gas and Electric Company

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In the Supreme Court of the United States

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No. 55

PACIFIC GAS & ELECTRIC COMPANY, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Brief of Pacific Gas and Electric Company

This cause is here on writ of certiorari to review a judgment of the United States Circuit Court of Appeals for the Ninth Circuit (R 1776), which affirmed, by an equally divided court (R 1741), an order of the Securities and Exchange Commission (R 1883, 1932) denying the application of Pacific Gas and Electric Company for an order, pursuant to Section 2(a)(8) of the Public Utility Holding Company Act of 1935, declaring it to be not a subsidiary of The North American Company, a registered holding Company. The effect of the order if not set aside, will be to subject

Pacific Gas to the obligations, duties and liabilities imposed by the Act.[1]

OPINIONS BELOW

The decision in the Circuit Court of Appeals (six judges participating), affirming the order of the Commission by an equally divided court, and also the dissenting opinion, are reported in 139 F.2d 298. The prior opinions in the Circuit Court of Appeals (three judges sitting) are reported in 127 F. 2d 378. The opinion and order of the Commission, dated September 10, 1941, is reported in 10 S.E.C. 39.

JURISDICTION

The judgment of the court below was entered November 18, 1943 (R 1776). A timely petition for rehearing was filed, and was denied February 23, 1944 (R 1777), at which time the court *sua sponte* entered an order continuing in effect the stay of the order of the Commission theretofore granted and likewise staying its mandate until after this Court disposes of a petition for certiorari, if such petition be filed on or before April 10, 1944. Said order was clarified by a further order made on October 9, 1944.

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[1] For convenience, Pacific Gas and Electric Company will be called Pacific Gas; the Securities and Exchange Commission, the Commission; The North American Company, North American; and the Public Utility Holding Company Act of 1935, the Act.

NOTE: All emphasis is supplied by us unless otherwise noted.

A petition for certiorari was filed on April 10, 1944, and was granted by this Court on May 22, 1944.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U.S.C. 347), and under Section 24(a) of the Public Utility Holding Company Act of 1935 (15 U.S.C. 79x).

SUMMARY

Pacific Gas is a California public utility company, all of whose operations are carried on in that State. North American is a registered public utility holding company with its offices in New York City. At the time of the hearing it owned 17.71% of the stock of Pacific Gas.[1]

The Act (the pertinent provisions of which are printed in the Appendix) provides in Section 2(a)(8) that any utility company 10% or more of the voting stock of which is owned by a holding company

[1]The S. E. C. brief in opposition to the petition herein states (p. 3):

> "North American has committed itself to a program of systematic disposition of its P.G.& E. stock. It is also under order to dispose of that stock and it urged no error in that determination except the general constitutional question now pending on a special calendar in this court."

North American's holdings have already been reduced to 13.2% of the stock of Pacific Gas, by periodical distributions of such stock as dividends on the stock of North American.

is a subsidiary company of such holding company, and subject to regulation under the Act, "unless the Commission * * * by order declares such company not to be a subsidiary company * * *." The Act further provides that

> "The Commission, upon application, *shall* by order declare that a company is not a subsidiary company of a specified holding company * * * if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company, * * * (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company * * * so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies."[1]

On November 29, 1935, Pacific Gas filed with the Commission its application for a declaration that it is

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[1]The Commission in its opinion does not contend that Pacific Gas is controlled by North American or that it is an intermediary company through which North American controls any other company, and these two features are not in the case. Pacific Gas contends that the evidence shows that its management and policies are not subject to the controlling influence of North American; this being so, requirements (i) and (ii) mentioned above are fulfilled in any event, since if no controlling influence exists, no control can exist.

not a subsidiary of North American. The application was heard in 1940, and on September 10, 1941, the Commission entered the order complained of denying the application upon the ground that Pacific Gas had failed to demonstrate that its management and policies are not subject to the controlling influence of North American.

Three facts were found by the Commission or are admitted: (1) that North American has never at any time controlled Pacific Gas, nor exercised a controlling influence over its management or policies; (2) there have never been any intercorporate transactions of any kind between North American and Pacific Gas either before or since North American became a stockholder in Pacific Gas; and (3) none of the evils enumerated in the Act, and which the Act was designed to eliminate, existed with respect to Pacific Gas.

Pacific Gas contends that such order is invalid and should be set aside because (1) in making said order the Commission misinterpreted and misapplied the Act and committed various other errors of law; and (2) the order of the Commission is not supported by substantial evidence and is in direct conflict with the only relevant, competent and persuasive evidence in the record—all of which shows that the management and policies of Pacific Gas are not subject to the controlling influence of North American.

STATEMENT OF THE CASE

The Statute.

The pertinent provisions of the Act are printed in the Appendix, pages 1 to 14.

As indicated by its title (An Act to Provide for Control and Regulation of Public-Utility Holding Companies, and for other purposes) the Act was passed to eliminate the evils attributable to interstate public utility holding companies. These evils (recited in Section 1, Appendix page 1) arise from ineffective state regulation and transactions between holding companies and their subsidiaries not carried out at arms length.

Its declared objective is to meet the problems and eliminate the evils which are "connected with public utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce" and to that end to eliminate such holding companies except as otherwise expressly provided in the Act (Sec. 1).

Local utilities are subject to the Act when they constitute part of a public utility holding company system and as such become subsidiaries as defined in the Act.

The test of whether a particular public utility company is such a subsidiary is whether a holding company controls it, or has a controlling influence over its management or policies.[1]

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[1]The Commission's construction of the Act in this particular is radically different, and is discussed in detail below.

Section 2(a)(8) of the Act provides a procedure for determining whether such control or controlling influence exists. If less than 10% of the voting stock of the local utility is owned by the holding company, then the local company is not deemed a subsidiary unless the Commission initiates a proceeding and, after hearing, finds that it is controlled by or subject to the controlling influence of the holding company. On the other hand, if 10% or more of the voting stock of the local utility is owned by the holding company, then the local utility is deemed to be a subsidiary unless it makes application for a declaration that it is not a subsidiary. If it does make such an application, it is excluded from the Act unless and until the Commission, after notice and hearing, denies the application. It is mandatory upon the Commission to declare that the applicant is not a subsidiary if it finds that it is not controlled by, and that its management or policies are not subject to the controlling influence of, the holding company.

Even though the Commission finds that a controlling influence exists, it must nevertheless hold that a local utility is not a subsidiary if it finds that it is not "necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties and liabilities imposed in this title upon subsidiary companies of holding companies."

Finally, the Commission may make its order granting the application conditional upon the applicant ap-

plying periodically for a renewal of the order, and filing periodic reports to enable the Commission to determine that the conditions (absence of control or controlling influence) are satisfied during the period for which the order is effective, and it may revoke or modify its order whenever it judges any of such conditions is not satisfied.

This latter provision was obviously intended to cover those cases where at the time of the hearing no control or controlling influence existed, but where such conditions might possibly arise in the future.

Proceedings Before the Commission.

On November 29, 1935, Pacific Gas filed its application under Section 2(a)(8) of the Act, seeking a declaration that it is not a subsidiary of North American.

Five years later the matter was assigned for hearing before a trial examiner, which hearing commenced November 12, 1940, and concluded January 16, 1941.

Hearing Before the Examiner.

The hearing was adversary in character, and the Commission's case, as well as that of Pacific Gas, was presented exhaustively.

Representatives of the Commission, prior to the hearing, examined the files of both North American and Pacific Gas, and admittedly every letter or paper deemed to bear upon the issue was introduced in evidence by the Commission (R 1295). In addition, Commission representatives had examined the records of

the Telephone Company to ascertain the number of telephone calls passing between North American and Pacific Gas. These were found to be between four and nine each year (R 1162).

The record of testimony covers 1685 typewritten pages. Of these, 541 pages represent examination by Pacific Gas counsel, and 711 pages by Commission counsel. 194 exhibits were introduced, 141 of them by Commission counsel.

It is fair to say that there was not a single fact, act or circumstance, during the entire 11 years that North American has been a stockholder of Pacific Gas, that was not thoroughly explored at the hearing. Every director and principal officer of Pacific Gas was examined, and so also were the principal officers of North American.

Upon invitation of the Commission, the California Railroad Commission appeared and participated. It showed that under the California Public Utility Act, Pacific Gas, since 1912, has been subject to its regulation, which covers all phases of its activities, and that it had been before the Commission in more than 900 proceedings. The Railroad Commission's statement concluded:

> "* * * we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public

interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations." (R 1875)

The Examiner's Report.

On April 16, 1941, the trial examiner (John G. Clarkson), filed his Findings of Fact and Report, and recommended that the application be granted.

The examiner's Findings of Fact (R 1779), numbered 182 in all, are documented by references to the record, and cover every phase of the relations between Pacific Gas and North American, both in the past and at the time of the hearing.

The Examiner's Findings.

As stated by the Commission in its opinion (R 1912), the Commission does not dispute the examiner's findings, which are printed in full in the Record at pages 1779-1882. Consequently these findings may be considered as an undisputed statement of the facts of the case.

The trial examiner found,[1] among other things:

1. Pacific Gas is a California corporation. All of its properties are located in California, and its busi-

[1] References to the findings give the number of the finding and the page of the record at which it appears, thus (F 111, R 1844).

ness is carried on exclusively in that state (F 19, R 1791).

2. It represents the consolidation of over 400 separate companies, some of which were in operation as early as 1850 (F 13, R 1788).

3. Its office is in San Francisco, where all meetings of its stockholders, Directors, and Executive Committee have always been held and where its books and records are kept (F 34, R 1801).

4. All of the 15 present directors and officers (with the exception of two nominees of North American) are residents of San Francisco or vicinity; were either born in California or came there at an early age; have no substantial interest in any eastern company; and either own or represent substantial stock interests. Many were connected with predecessor companies. The fathers of four were active in the affairs of such predecessors. They are prominent in the community, know each other well, several since boyhood (F 38, 39, R 1807).

5. The Board is composed of intelligent men of initiative, independence and ability. All business is fully discussed. They would resent any outside interference and believe the company can "best be managed by Westerners for Westerners" (F 122-125, R 1851).

6. In 1925 North American entered California by acquiring the majority of the stock of Western Power which then controlled Great Western, a public utility

operating in California and which was in active competition with Pacific Gas (F 55-59, R 1816-17). From 1925 to 1930 North American supervised and controlled Great Western and its affiliated companies, charging substantial fees for such supervision (F 77, R 1827).

7. Pacific Gas as early as 1906 had desired to acquire Great Western, and had made approaches over the years (F 63, R 1819). By 1930 competitive conditions were such that the companies and the public recognized the resulting inefficiences and waste (F 59, R 1817).

8. In 1929, the President of Pacific Gas initiated negotiations to purchase Great Western (F 64, R 1819), which culminated in an agreement dated March 29, 1930. Under this Pacific Gas purchased North American holdings, and paid North American therefor 1,825,000 shares of its common stock[1] (F 69, R 1823).

9. During the negotiations, the President of Pacific Gas advised North American that it would not make the purchase if it would jeopardize its control by local directors. North American, through its representative, gave assurance that it did not desire to control Pacific Gas and would not increase its holdings or attempt to interfere with the management or policies of applicant, and would consider itself an investor only. It was only after these advices were communicated to

[1] Being 19.21% of its outstanding voting stock. North American had theretofore not owned any stock of Pacific Gas. (R 1821)

Pacific Gas Directors that the purchase was authorized, and it would not have been authorized without these assurances (F 66, 67, R 1821-2). It was agreed that North American would be accorded representation by three directors out of fifteen, this being the number it could elect by cumulative voting of its stock (F 86, R 1823).

10. The agreement and purchase were approved by the California Railroad Commission on May 14, 1930 (F 70, R 1824). Immediately thereafter the business and properties of Great Western and its affiliated companies were incorporated into those of Pacific Gas, all under direction of the General Manager of Pacific Gas without participation by North American in any decision as to personnel or otherwise. Concurrently, all indebtedness, contracts, procedures and relationships between Great Western and North American were cancelled and terminated (F 72-73, R 1825).

11. At no time before or since the 1930 purchase have there been any intercompany or other transactions of any kind whatsoever between Pacific Gas and North American.[1] More specifically—

[1] This should be contrasted with the supervision and control which North American exercised over Great Western, which included budgets, cash, rates, financial, inspection, representation on joint committees with other subsidiaries on rates, new business, station advisory and engineering, group purchasing and cash advances which at the time of the purchase exceeded $19,000,000. For supervisory services North American charged Great Western and its affiliates an average of $50,000 per year (F 77-82, R 1827-9).

12. Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Pacific Gas (F 132, R 1855).

13. There have never been any intercompany loans or other financial transactions between Pacific Gas and North American (F 134, R 1855). All of the major acquisitions and construction projects of Pacific Gas have been and are decided upon, budgeted and carried out within its own organization and entirely independent of North American at all stages (F 135, R 1855). North American's organization has never assisted Pacific Gas in the preparation of any Registration Statement (F 136, R 1855).

14. Pacific Gas and North American do not employ the same accountants, attorneys, or engineers (F 138, R 1856).

15. North American has never recommended or suggested to Pacific Gas the employment of any person or been asked its views thereon (F 139, R 1856).

16. No employee of Pacific Gas, nor of North American or of its admitted subsidiaries has ever been loaned by either to the other (F 140, R 1856).

17. North American has never underwritten any securities issued by Pacific Gas, nor participated in any way in its financing (F 154, R 1868).

18. North American has never made any suggestions or recommendations, nor has it been asked its views, with respect to the dividend policy or the dec-

laration of dividends, with a single exception in 1933, when it asked that Pacific Gas reconsider its action in reducing the common dividend, which request was not acceded to (F 98, 99, R 1838).

19. North American has never had anything whatever to do with the accounting practices or rate, dividend, or other policies of Pacific Gas (F 144, R 1857, F 154, R 1868).

20. The banking connections, transfer agents, registrars and trustees of Pacific Gas are predominantly Californian, were all selected before North American became a stockholder and no important changes have been made since. North American has never acted as transfer agent, coupon paying agent, or registrar, nor has it performed fiscal services of any nature for Pacific Gas. Pacific Gas has not had occasion to borrow money from banks for over thirty years (F 130, R 1854).

21. Neither of the two North American directors of Pacific Gas at the time of the hearing had ever attended a directors' meeting, and one of them had never been in California (F 88, R 1832, F 102, R 1840).

22. At present and in the past communications and contacts between North American and its officers and Pacific Gas and its officers have been infrequent and unimportant (F 91, R 1834). The North American officers do not know any of the Pacific Gas officers with minor exceptions, save Mr. Black (F 100, R 1839).

23. The North American officers who are directors of Pacific Gas receive periodic reports, consisting of those submitted to the directors, and executive committee, a form of financial report sent to insurance companies, rate schedules and statistical reports. These convey less information than is received by the directors and members of the Executive Committee who attend meetings (F 94, R 1835).

24. James B. Black, President of Pacific Gas, was born in Illinois, brought to California at the age of 12, and has lived there ever since with the exception of the period from 1927 to 1935 when he resided in New York, and was a Vice-President of North American. He was educated in California, and graduated from the University of California in 1912. He entered the employ of Great Western in 1915, and rose through various positions until in 1922 he became Vice-President and General Manager. In February, 1927, at the invitation of North American, he went to New York as a Vice-President and remained there until 1935. His principal duties from 1927 to 1930, when Great Western was purchased by Pacific Gas, were to supervise Great Western's affairs. He was not a director of North American. After the sale of Great Western to Pacific Gas, he was elected as one of North American's directors on the Board of Pacific Gas and looked after North American's investment in that company. He came to California on an average of once a year (F 111-114, R 1844-1846).

25. On November 11, 1935, Mr. Hockenbeamer, President of Pacific Gas, died. On November 20, 1935, Mr. Black was elected as his successor. His selection was made on the initiative of C. O. G. Miller and other California directors, many of whom had known Mr. Black prior to 1927 when he was with Great Western, and a competitor of Pacific Gas. The fact that he was a Californian, familiar with some of Pacific Gas properties, and his experience and youth were deemed qualifications. He was recommended to Mr. Miller by a number of stockholders (F 115, R 1847).

26. The Directors had selected Mr. Black before North American knew anything about it, and his selection was a surprise to it and its officers were not enthusiastic about his leaving. The fact he was an officer of North American was not considered by Pacific Gas directors as a favorable factor, and he was chosen only after the directors had determined to their satisfaction that he would not be subject to influence by North American (F 115-16, R 1847). Mr. Black has not acted as a representative of North American nor has he been controlled or influenced by that company or any of its officers (F 119, R 1849). He has never received any requests or instructions from North American and it has never made any attempt to control or influence his action. He has never sought or received the advice, approval or recommendation of North American or any of its officers in any personnel, dividend, rate, salary, refinancing or other pending matters (F 120, R 1849).

27. North American has always given a proxy to vote its stock to the regular proxy committee named by Pacific Gas management. This committee has always consisted of the President, Vice-President and General Manager, and Treasurer. When North American became a stockholder in 1930, it owned 19.21% of the voting stock. By the time of the hearing (November 1940) it had progressively declined to 17.71%. During this period a majority of the outstanding stock would have been represented at only two of the stockholders' meetings if North American had not been represented, but if North American had not been represented or had withdrawn, a quorum could probably have been obtained by sending out an additional notice, as an attendance of 75% or more could have been and can be obtained by sending out a second notice (F 105-7, R 1841-3).

28. In 1933, the Pacific Gas directors voted to reduce the regular common stock dividend from 8% to 6%. Upon public announcement of the reduction, North American heard of it and requested the Board to reconsider its action, but it never did (F 144, R 1857). This is the only instance when North American attempted to influence the management or policy of Pacific Gas (F 145, R 1857).

29. Since its properties were purchased by Pacific Gas in 1930, North American has not attempted to exercise any control (F 156, R 1869). It could not if it attempted to and its attempts were resisted by local

directors, secure sufficient proxies to obtain a majority at a stockholders' meeting (F 127, R 1856). The maximum influence that North American can exert on the control, management or policies of Pacific Gas by virtue of its ownership of 17.71% of its stock, would be by cumulating its voting power. The maximum effect of its doing so at any meeting since it became a stockholder would be to enable it to elect four directors out of 15 (F 129, R 1853).

30. The directors and members of the Executive Committee of Pacific Gas attend with great regularity. No individual or group dominates the Board. There is free and full discussion in which all participate (F 35, 36, R 1802-3). No local director has ever observed anything that would indicate that the management or policies of Pacific Gas were subject to a controlling influence, directly or indirectly, by North American (F 126, R 1832).

31. Pacific Gas is regulated in all its phases by the California Railroad Commission which possesses the widest powers. Since 1912 all its securities (which include all those presently outstanding save 15% of its common stock) have been issued only on the permit of the California Commission which has also passed on all acquisitions, mergers, and exercise of franchises (F 159-167, R 1871-4). Present and prospective investors in Pacific Gas securities can obtain the information necessary to appraise its financial condition and earning power (F 171, R 1876). It keeps its accounts

in accordance with the uniform system of accounts. Its stock is listed on the New York and San Francisco stock exchanges, and in issuing securities it has filed registration statements required by the Securities Act of 1933 (F 172-6, R 1876). All its properties have been recorded on its books at cost (F 28, R 1798). Its annual appropriations for maintenance and depreciation aggregated 18.092% of its gross operating revenues for 1939 (F 29, R 1798). It originated the practice of sale of securities to customers and has sold large amounts of its stock to residents and consumers in its territory with resultant improvement in public and customer relations (F 33, R 1801).

32. The California Railroad Commission appeared at the hearing and filed a statement. This statement comments on the wisdom of the growth of Pacific Gas, particularly in its acquisition and consolidation of the properties of Great Western. The statement also declares that

> "Yet, as also stated in the beginning, we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding

Company Act upon subsidiary utility corporations." (F 170, R 1875)

After making these findings of fact the examiner concluded by recommending that the Commission should find and conclude—

> "4. That the management and policies of the Pacific Gas and Electric Company are not subject to the controlling influence, directly or indirectly, of the North American Company, wherefore it is not necessary or appropriate in the public interest and for the protection of investors or consumers, that the Pacific Gas and Electric Company be subject to obligations, duties and liabilities imposed by the Public Utility Holding Company Act of 1935;" (R 1880)

The Commission's Decision.

After the trial examiner made his report and recommendation, the Commission, on September 10, 1941, denied the application.[1] The basis of the Commission's decision is apparent from the following passages in its opinion (R 1883):

> "There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's

[1] The application also prayed for an order pursuant to Section 3(a) of the Act exempting Pacific Gas from regulation under the Act as a holding company. This application was granted upon a finding that Pacific Gas is a California public utility company whose operations as such do not extend beyond the State of California (R 1911). The present proceeding does not involve this phase of the Commission's Order.

report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner." (R 1912)

The opinion also states that:

"We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E." (R 1920)

Again the opinion says:

"But our decision herein is based primarily on our finding that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner." (R 1922)

The opinion concluded with the following statement:

"The only question which we have decided is that, in the circumstance of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company." (R 1931)

The Proceedings in the Court Below.

In the first decision of the court below, three judges sitting, Judge Haney, with Judge Stephens concurring,

it approved the Commission order (R 1699). Judge Garrecht dissented (R 1718).

The majority opinion, while saying that "a reasonable man could reach the conclusions the Commission reached and therefore the finding[1] must be sustained", finally turned upon the proposition that under clause (iii) of Section 2(a)(8), the Commission had uncontrolled discretion to subject a local utility (10% of whose stock was owned by a holding company) to regulation under the Act if it believed it was in the public interest to do so, irrespective of any evidence. The court reached this remarkable conclusion by construing Section 2(a)(8) as containing four conditions instead of three, the fourth condition being termed the "necessity clause", which, being independent of the control or controlling influence clauses, authorized the Commission to dismiss an application if it believed that it was in the public interest to hold the local utility subject to regulation under the Act.

A rehearing before the entire court, then consisting of seven judges, was granted (R 1739). On rehearing the court affirmed the order of the Commission, by an equally divided court, Judge Haney having died in the interim.

The court below entered its order without any expression other than that its action was "by an evenly divided court" (R 1741).

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[1] The "finding" was only that Pacific Gas had not *demonstrated* the absence of controlling influence or the future possibility of any influence.

Judge Garrecht, however, filed a dissenting opinion from the judgment affirming the Commission's order, in which dissent Judge Mathews joined (R 1714). This dissenting opinion contains an extensive analysis of the record before the Commission, and finds that there was no substantial evidence of the existence of a controlling influence by North American over Pacific Gas; that the Commission's findings rested on speculation and conjecture as to whether North American might acquire a controlling influence in the future; and that the Commission misinterpreted the Act by holding that susceptibility to future influence is the equivalent of the controlling influence required by the Act.

ERRORS RELIED ON

1. The Commission misconstrued and misapplied the Act in several particulars:

(a) It held that Pacific Gas is a subsidiary of North American irrespective of whether in fact it is subject to North American's controlling influence.

(b) It misapprehended the statutory test of a subsidiary, holding that the Act makes absence of controlling influence a mere statutory exception to the primary intention of subjecting to federal regulation all local public utilities of whose voting stock 10% or more is owned by a holding company.

(c) It held that the mere speculative possibility of future "substantial" influence authorizes regulation under the Act.

(d) It held that the Act imposed on Pacific Gas the virtually impossible burden of "demonstrating" a negative, namely, absence of control and controlling influence.

(e) It gave no effect to the requirement that influence, to authorize regulation under the Act, must be "controlling" influence.

2. There is no substantial evidence of the existence of a controlling influence of North American over Pacific Gas. The Commission's order is based on suspicion and conjecture, and is not supported by substantial evidence.

3. The court below did not give the review of the Commission order contemplated by the Act.

I.

THE COMMISSION MISCONSTRUED AND MISAPPLIED THE ACT

The Commission, after stating that

> "There is almost no dispute as to the facts in the case as they are set forth in the trial examiner's report and in the briefs of both counsel. The point of issue with respect to the application under Section 2(a) (8) is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner." (R 1912),

then proceeded to expound its view of the law and, as we submit, misconstrued and misapplied the Act in several particulars, which are now discussed.

The Commission Misapprehended the Statutory Test of a Subsidiary.

In unmistakable language, the Commission held that the primary intent of the Congress, as expressed in Section 2(a)(8), is that all local public utilities 10% or more of whose voting stock is owned by a holding company shall be subjected to federal regulation.

It held that since North American owns more than 10% of the voting stock of Pacific Gas, "the statute presumptively requires that PG&E be regulated as a subsidiary of North American"; and having found that petitioner "has not demonstrated that its management and policies are not subject to the controlling influence of North American" (R 1930), concluded that petitioner had failed to "demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company" (R 1931).

Unequivocally therefore, the Commission held that the Act makes absence of controlling influence a mere statutory exception to the primary intention of subjecting to federal regulation all local public utilities of whose voting stock 10% or more is owned by a holding company.

The Statutory Test of a Subsidiary Is Controlling Influence, Not Stock Ownership.

The Commission, we submit, thus replaced form with substance, and substance with form. The whole tenor of the Act, its history, the debates in Congress, and

the construction urged upon this Court in defense of its constitutionality, all show the substantive intent of the Act to be that only local utilities controlled by, or subject to the controlling influence of, interstate holding companies are subjected to regulation as subsidiaries; and that local utilities not so controlled are excluded. The test laid down was the existence as a fact of control or controlling influence over the local utility by the holding company, and not the percentage of stock owned.

The procedure provided by both Section 2(a)(7) and Section 2(a)(8) of the Act shows that its purpose is to include within the ambit of the Act only those local utilities subject to the control or controlling influence of holding companies and to exclude those which are not, and that stock ownership is utilized simply to provide practical machinery for initiating proceedings to determine which of all the public utilities in the country are to be regulated under the Act, and which are not.

Senator Wheeler, in charge of the bill, pointed this out during the debates, when he said (79 Congr. Rec. 6397):

> "This is only prima facie evidence; but even if they hold 40 per cent of the stock of a company they may come before the Commission and produce evidence that they are not actually in control of the company, and the Commission is directed to make a finding and to exempt them if they are not actually controlling the company as the word 'control' is defined in the bill."

See also Senator Wheeler's remarks at 79 Congr. Rec. p. 8439, where he said:

> "The mere ownership of the 10 per cent of the stock does not of itself make him a holding company, because unless he actually controls the company he is not a holding company."

Still further corroboration of the foregoing is found in a *"Memorandum in Support of Constitutionality of the Public Utility Holding Company Bill"*, frequently referred to in the Congressional debates, which was prepared by sponsors of the bill, and commended to attention by Senator Wheeler, who had it printed in full in the Congressional Record so that it might be readily available (See his remarks, 79 Congr. Rec. 8402).

This Memorandum, after stating the grounds for sustaining federal regulation of interstate holding companies, continues as follows (79 Congr. Rec. 8406):

> "The claim may be made that the Regulations go beyond their stated purpose [as stated in Section 1 of the Act] because many of them are directed against the subsidiary companies of registered holding companies. The point is without merit. . . . Regulation of actions of companies controlled by those under the jurisdiction of Congress —those whose policies are determined completely by the registered holding company—is merely a means of applying and making effective the basic authority which the bill asserts over the registered holding company."

And again the Memorandum says:

> "The case for regulation of transactions between the holding company and its subsidiary companies is equally clear. These transactions are not contracts freely made at arm's length, but the decisions of the holding company itself sitting through its representatives on both sides of the table." (79 Cong. Rec. 8407)

The foregoing cannot be more succinctly stated, nor the rationale of the Act more clearly expounded, than in the following passage quoted from page 195 of the brief of the Commission in this Court in the *Electric Bond & Share case* (303 U.S. 419), in which case the Act was held constitutional.[1] While the discussion there refers to "control" from the standpoint of the holding company, the statutory provision with respect to "control" from the standpoint of the subsidiary is similar, and the discussion is equally applicable:

> "The bill as originally introduced defined a holding company as a company which directly or indirectly controls a public-utility company. As thus drafted the bill would have made it necessary for a company to determine for itself and at its own risk whether it had such a controlling authority over a utility company as to constitute it a holding company. Had this provision not been

[1] This brief is signed by Homer Cummings, Attorney General, Allen E. Throop, General Counsel, Securities and Exchange Commission, Robert H. Jackson, then Assistant Attorney General, and by Benjamin V. Cohen and Thomas G. Corcoran, Special Assistants to the Attorney General and recognized draftsmen of the bill.

changed or had it taken the slightly modified form suggested by the Committee of Public Utility Executives, holding companies would have had to guide their own action on the basis of a standard no more definite than that given to the Commission to guide its administrative determinations. Anyone familiar with modern corporate affairs knows the practical difficulties involved in determining the existence or non-existence of corporate control, one of the most elusive problems in corporate finance. There is no single, inflexible rule (whether it be stock ownership, interlocking directorates, or interlocking banking arrangements) that will give the correct solution in all cases.

* * * * * * *

"The standard of 'control' was known to be susceptible of judicial and quasi-judicial determination. It had been adopted by the courts themselves in some of the Sherman Act cases. *United States v. Union Pacific R. Co.*, 226 U.S. 61. The Congress, however, found it impracticable to put upon the Commission the burden of making the initial specific determination of control for each and every holding company before that company could be deemed a holding company and required to register. Not only would such procedure have been too cumbersome and dilatory to be effective, but it would have placed the burden of proof upon the Commission to ferret out elusive and subtle facts peculiarly within the knowledge of each company, an almost impossible task.

"The Congress selected the element of stock ownership, the factor most usually indicative of control, as *prima facie* evidence of control. And in the same provision the Congress set up the ma-

chinery for rebutting this presumption so that a company may readily prove, if such be the fact, that it does not possess control. Such burden of proof is not onerous, because every company has completely within its own organization full knowledge and control of all the facts and evidence. And the Act provides that upon the mere filing in good faith of an application for exemption the company shall automatically be exempted until the Commission acts upon the application. Judicial review is provided to guard against any arbitrary action on the part of the Commission and to afford a remedy should the Commission's findings of fact be not supported by substantial evidence (Section 24(a)). No more careful and painstaking effort to meet every legal and practical requirement involved in this difficult and complicated situation could have been made by a legislative body.'"[1]

The statutory scheme, therefore, amounts to this:

1. A local utility is subject to the Act only if it is part of a holding company system by reason of being subject to the controlling influence of such holding company.

2. The local utility is presumed to be subject to the controlling influence of a holding company and hence subject to the Act, if 10% or more of its stock is owned by such a holding company, unless the Commission finds it is not subject to such controlling influence.

[1] See Senate Committee Report on the Bill (74th Congress, First Session, Report 621, page 5); also *Electric Bond & Share Co. v. S.E.C.* (C.C.A.2d), 92 F.2d 580, 592.

3. It is made the duty of the Commission to find that the local utility is not subject to the controlling influence of the holding company (and hence not subject to the Act), upon application of the local utility and upon a showing of that fact by the local utility, and pending hearing and decision the local utility (whether it is finally found to be controlled or not) is not subject to the Act.

The Commission in acting upon such application of a local utility acts in a judicial capacity. The proceeding is, in substance, one for a declaratory judgment, and the Commission exercises no discretionary or administrative powers in determining whether a local utility is in fact controlled or subject to a controlling influence. It is a fact finder. The application is not one for exemption from the Act but for a declaration that the local company is not subject to the Act.

At Most, the Act Raises a Rebuttable Presumption of Control from Stock Ownership.

The fact that holding companies and others frequently exercise a controlling influence with less than majority holdings will not support a conclusive inference that such influence results from definitely minority ownership in a particular case. Since such stock ownership is entirely consistent with lack of control in an infinite variety of situations, a conclusive presumption of control from mere ownership of 10% or less than a majority of a corporation's stock would be arbitrary, and void. See *Tot v. United States,* 319 U.S. 463, 467, and cases there cited.

Nor did Congress intend that 10% stock ownership shall of itself be substantial evidence of controlling influence, for that would make meaningless the provisions for judicial review. No case can arise under Section 2(a)(8) unless 10% stock ownership is present; and it was not intended that the fact giving rise to the inquiry would preclude the judicial review provided to determine whether the order is "supported by substantial evidence". (Sec. 24(a))

Certainly, the most that was intended by Congress was that such stock ownership should raise a rebuttable presumption, for the purpose of simplifying the determination of which public utilities are subject to the control or controlling influence of interstate holding companies and are therefore intended to be subjected to federal regulation as their subsidiaries. Ownership of 10% of a local utility's stock has significance only as marking the point where the utility is placed under the duty of initiating proceedings for a determination of status. Once the utility has filed its application it is exempted from the Act until decision thereon is made, and it is entitled to a hearing at which evidence may be introduced. The Commission is placed under the duty of weighing that evidence and deciding in accordance therewith. Once a hearing is had and the utility makes a full disclosure of the facts the significance of the duty of going forward, initially placed upon it, disappears from the case.

The rule with respect to presumptions has been frequently announced by this Court, namely, that they are

not evidence, and cannot be weighed as evidence, but simply require the production of contrary evidence; and when that is done, disappear from the case. *New York Life Ins. Co. v. Gamer,* 303 U.S. 161; *Tot v. United States,* 319 U.S. 463; *Commercial Corp. v. New York Barge Corp.,* 314 U.S. 104.

This view of the effect of the presumption was correctly taken by the court below in its first decision when it held that, while under the Act it was the duty of the applicant to go forward with the evidence,

> "When the evidence is all in, the Commission considers the whole body of evidence, both pro and con, and finds what the ultimate facts are unrestrained by any rule regarding the burden of proof, as used in the first sense." (i.e. the duty to prove a charge by a degree of proof such as a preponderance of the evidence) (R 1707)

See *Anniston Mfg. Co. v. Davis,* 301 U.S. 337, 352.

In view of the trial examiner's findings, it is impossible to doubt that in the present case the evidence of Pacific Gas rebutted any presumption of controlling influence raised by North American's ownership of stock, such presumption therefore ceasing to be a factor in the case.

Consequently, it was error for the Commission to rest its decision on the ground that since North American owns more than 10% of petitioner's stock, "the statute presumptively requires that PG&E be regulated as a subsidiary of North American" (R 1931).

The Commission Imposed the Almost Impossible Burden of "Demonstrating" a Negative.

Having held that petitioner was under the burden of proving that it fell within a statutory exception, it was natural for the Commission to hold, and to state three times, that to prevail, petitioner must "demonstrate" the absence of controlling influence (R 1912, 1930, 1931). The Commission left no doubt of its meaning, declaring that in cases such as this,

> "the applicant must show that nothing . . . would suffice to make its management or policies 'subject to a controlling influence' "[1]

of the holding company (R 1914).

Thus the Commission invoked and applied the familiar rule that statutory exceptions are to be narrowly construed and that one who seeks the advantage of such an exception must show by more than the usual degree of proof that he falls within it: *Javierre v. Central Altagracia,* 217 U.S. 502; *Schlemmer v. Buffalo Ry. Co.,* 205 U.S. 1, 10; *Ryan v. Carter,* 93 U.S. 78; *United States v. Cook,* 17 Wall. 168; *United States v. Dickson,* 15 Pet. 141, 165; *United States v. Scharton,* 285 U.S. 518, 521.

Since an adequate showing that a company is not a subsidiary would in many cases fail to meet the test thus adopted and applied by the Commission, its misconstruction of the statute in this regard was preju-

[1] This statement appears in the Commission's decision where it is quoted with approval from its decision in the Hartford Case, 8 S.E.C. 758.

dicial. See *McCandless v. United States,* 298 U.S. 342, and cases cited.

There is no doubt that the Commission used the word "demonstrate" in its usual sense when it stated, at three points in its opinion, that petitioner must demonstrate that it is not subject to the controlling influence of North American (R 1912, 1930, 1931).

The Commission said:

> "First, it is clear that the application herein cannot be granted unless we can find that applicant has sustained the burden of *demonstrating* that its management and policies are not subject to the controlling influence of North American" (R 1912)
>
> "* * * we hold that applicant has not *demonstrated* that its management and policies are not subject to the controlling influence of North American * * *" (R 1930)
>
> "* * * the facts in the record before us do not *demonstrate* that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company" (R 1931).

Even affirmative proof is seldom required to be proof to a demonstration. "Demonstration is that which excludes possibility of error" (*Boetgen v. N.Y. & H.R. Co.,* 50 N.Y.S. 331, 332). It is defined in 23 C.J. 9, as follows:

> "Demonstration is such a degree of proof as, excluding possibility of error, produces absolute cer-

tainty, and has been said to be presented only in mathematical deductions."

In *Jones on Evidence* (3d ed.), Sec. 5, it is said:

> "In judicial procedure the issues are so framed that it is hardly possible to establish with absolute certainty the truth of the propositions involved; hence in courts of justice parties are compelled to rely not upon demonstrative but upon moral evidence, 'by which is meant not only that kind of evidence which is employed on subjects connected with moral conduct, but all the evidence which is not obtained either from intuition or from demonstration.'"

Such degree of proof is rarely attainable and, as was said in *Baltimore etc. R. Co. v. United States,* 298 U.S. 349, 378:

> "Many issues as to which demonstrable accuracy is impossible have to be decided by the courts. In ascertaining cost of transportation of one out of many commodities hauled by railroads it is impossible to attain precision. Mere lack of it is not ground for objection either to the evidence offered or the facts which it tends to prove."

The Act sets up no such degree of proof. Neither its sponsors, as noted from their explanation of the bill (supra, p. 27), nor those who argued in its favor in Congress, took such a view of its requirements. Counsel who successfully argued in the Supreme Court in support of the constitutionality of the Act, referred

to the presumption as one "which might be rebutted",[1] as one under which a company may "readily prove absence of control",[2] as one which "can readily be rebutted . . . upon a showing that the company does not in fact exercise control".[3]

Even in ordinary civil cases it has been held error to require that the evidence amount to "convincing proof" (*New York Life Ins. Co. v. Gamer,* 303 U.S. 161; *Murphy v. Waterhouse,* 113 Cal. 467, 473; *People v. Miller,* 171 Cal. 649, 652).

But in this case the Commission required even more; petitioner was "called on to prove a negative against an all-embracing, sweeping conclusion" (*Leonard v. Lead Co.,* C.C.A. 8th, 75 F. 2d 390, 397).

The authorities recognize the great difficulty of proving a negative, and hold that less than the usual degree of proof should be accepted as sufficient. No court so far as we know has ever announced or applied the virtually impossible burden of "demonstrating" a negative.

All that is required of parties subject to the burden of proof is to produce proof sufficient to show that the negative fact or circumstance is probable. 20 *Am. Jur.* 1099; 23 C.J. 27; *Jones on Evidence* (3d Ed.) Sec. 178; *Prentice v. Crane,* 234 Ill. 302.

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[1] P. 188 of brief for SEC in *Electric Bond & Share* case.

[2] P. 197 of said brief.

[3] P. 6 of Appendix A to said brief.

The Commission Held That the Statutory Test of an Existing "Controlling Influence" Is Satisfied by a Finding That Purely Hypothetical Future Machinations Might Produce a Controlling Influence.

Section 2(a)(8) requires the Commission to declare applicant not to be a subsidiary if it finds that it "is" not controlled, and that its management or policies "are" not subject to a controlling influence. The statute speaks in the present tense; the determination is to be based on the facts existing at the date of the inquiry.

It is not necessary for us to contend, as the Commission has frequently suggested that we do, that the "controlling influence" must be exercised in order to meet the statutory requirement.[1] For the purpose of this argument, we may assume that the present existence of the power, whether or not in the process of being exercised, is sufficient. That is to say—it may be sufficient if the power exists though quiescent. The power, however, must presently exist and must be strong enough to be "controlling" if exercised—not something less than controlling.

That the "controlling influence" spoken of is intended to be presently existing is further shown by

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[1]Under Sec. 2(a)(7) of the Act, a stockholder is not a holding company if the Commission finds it "does not * * * exercise * * * a controlling influence over the management or policies of any public utility." It would appear logically to follow, that the utility likewise is not a subsidiary unless in fact a controlling influence is exercised over it by a holding company.

elaborate provisions in the same section of the Act, whereby the Commission may insure that a company declared not to be a subsidiary will be promptly brought under regulation if one of the conditions prescribed in the Act arises later. Thus, Section 2(a)(8) authorizes the Commission (Appendix p. 7):

1. To make its order (declaring the applicant not a subsidiary) conditional upon the applicant's applying periodically for a renewal of the order;

2. To require an applicant declared not to be a subsidiary to file such periodic reports as the Commission may deem appropriate, regarding the intercorporate relationships of the applicant, so as

> "to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective";

3. To revoke its order declaring the company not a subsidiary whenever it determines that "any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company";

4. To modify its order whenever deemed necessary "to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective."

These provisions plainly evidence Congressional intent that any particular public utility shall not be subject to the obligations of the Act unless a con-

trolling influence is presently in existence, and also intent to require that the Commission shall grant a declaration, in a case such as this, where all that it found was a purely speculative possibility that a controlling influence might come into existence at some future time. Indeed the Commission did not characterize the possible future influence as "controlling" but only as "substantial and affirmative." (R 1923)

A prediction of possible future influence, unsupported by any past or present exercise of, or even attempt to exercise, influence was not intended by the Congress to subject local utilities to federal regulation.

The Commission here expressly refrains from finding that petitioner is presently subject to the controlling influence of North American. Having interpreted the phrase "subject to a controlling influence" as including "susceptibility to domination" (R 1913-1914), the Commission stated:

> "There is evidence [which the Commission does not identify] to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a negative way. But our decision herein is based primarily on our finding that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner." (R 1922-1923)

Thus the Commission not only fails to find, it does not even predict, that North American will be able to exer-

cise a "controlling" influence over the management or policies of petitioner.

The studied avoidance by the Commission of a finding of the existence of a controlling influence, constitutes, under the circumstances, a startling admission by it that the evidence was not sufficient to support a finding that a controlling influence actually existed.[1]

Later, the Commission says that in a proxy fight (none has ever occurred and nothing is suggested as a basis for supposing that one ever will occur), "North American's holdings would make it a formidable opponent"; and that the possibility that it might win such a proxy fight[2] "would, in itself, be a potent tool

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[1]This case illustrates the wisdom of the rule frequently announced that where a determination of status imposes burdensome statutory obligations, the facts which furnish the basis for the determination must be affirmatively found. *Panama Ref. Co. v. Ryan,* 293 U.S. 388, 431; *United States v. Baltimore & Ohio R. Co.,* 293 U.S. 454, 458, 462; *United States v. Carolina Carriers Corp.,* 315 U.S. 475, 489; *Florida v. United States,* 282 U.S. 194, 211; *Yonkers v. United States,* 320 U.S. 685, 691.

[2]All the witnesses testified and the trial examiner found that North American could not win a proxy fight. (F 127, R 1853.) The existence of the Public Utility Holding Company Act, and the regulation requiring commission approval before a holding company can even solicit proxies, makes the suggestion that North American could win a proxy fight against the California directors appear fantastic. Events since the hearing make such a possibility even more absurd. North American has already disposed of more than a quarter of its holdings of Pacific Gas stock and as stated by counsel for respondent "has committed itself to a program of systematic disposition" of the remainder.

in influencing the management to give heed to North American's wishes". The Commission's view of what the statute requires is further shown by its holding that:

> "To satisfy condition (iii) the applicant must show that nothing in the course of relationships between the specified holding company and itself would suffice to make its management or policies 'subject to a controlling influence, directly or indirectly by such holding company' . . ." (R 1914)

Unequivocally, therefore, the Commission construes the statute to require an applicant to show not only that it is not presently subject to the controlling influence of a holding company, but to show in addition that a controlling influence could not arise in the future—an impossible task.

We submit that the very purpose of the detailed provisions just described, for retention of jurisdiction by the Commission after granting an application under Section 2(a)(8), was to eliminate all occasion for (and by implication to forbid) regulation of a public utility where at the time of the inquiry, the holding company did not possess the power to control or to exert a controlling influence.

The foregoing is well expressed in Judge Garrecht's dissenting opinion in which Judge Mathews joined. As Judge Garrecht points out—

> "The Commission admits that the record does not reveal any past attempt by North American to interfere with its management or policies. It is

likewise conceded that there is no evidence of actual control, nor, as has been shown, is there any substantial evidence from which any legally sound inference can be drawn that there ever was any effort whatsover by North American to subject appellant to any controlling influence." (R 1768)

Judge Garrecht then refers to the express provisions of Section 2(a)(8) whereby the Commission, after declaring a company not to be a subsidiary, may require periodical reports, and may revoke or modify its order at any time on its own motion.

His opinion continues as follows:

"These provisions indicate that the Congress intended to cover a situation where there might be some 'susceptibility' of such influence in the future but where none presently existed and that it did not intend that a declaration should be withheld in the absence of present active controlling influence.

"From the discussion in Congress at the time the Act was under consideration and as well from the fair and ordinary meaning of the language, the phrase 'subject to a controlling influence' does not mean, as the Commission found, that appellant was required to 'demonstrate' that its management and policies were not 'susceptible to control' by North American. 'Subject to a controlling influence' is not the equivalent of 'susceptible to a controlling influence'. 'Susceptible' and 'subject' are not interchangeable or synonymous terms. The word 'susceptible' connotes an especial liability to mental and emotional impressions. Advisedly that expression was not used in the statute. But the

word 'subject' is used, and here it occurs in relation with 'control', and in that sense it must correctly be continued [construed] as meaning under the power or dominion of another. It is synonymous with subordinate, inferior, 'To control' means to exercise a restraining or direct influence over; to dominate; regulate; hence to hold from action; to curb; to subject. Moreover, 'controlling' means the act or fact of exercising restraining influence over, which conveys the idea of a continuing process. Thus, 'subject to a controlling influence', as stated in the statute, is not the same thing as 'susceptibility' to a controlling influence as expressed by the Commission. One phrase refers to an actually existing state; the other might be applied to some future condition which uncertain events might possibly bring about. In considering this aspect of the matter it is important to keep in mind that under the statute as above noted the Commission is in a position to act at once if ever the susceptibility should become an actuality, even if the Commission had theretofore granted petitioner an exemption at a time when the facts showed a lack of any actual and existing control or controlling influence.

"It is also clear that the vague, artificial tests here employed are not sanctioned by the Act. Nor was it expected that inferences based upon inferences, or suppositions, or even possibilities, would be substituted for substantial evidence." (R 1769-71)

The Commission Construed and Applied "Controlling Influence" as Meaning "Influence" Only.

In an article analyzing the Commission's opinions in "controlling influence" cases, the author says:

> "In the opinion of the writer the term 'controlling influence' has been consistently interpreted by the Commission to mean 'influence' only. Certainly the word 'controlling' has not been given its ordinary significance." (40 Univ. of Mich. L. Rev., 274, 284.)

Plainly, we submit, the Commission ignored the word "controlling" in the present case. Later we show that the writer of the Commission's opinion marshaled every faintest suggestion in the record which could be advanced to give any support to the result reached, and ignored or slighted all evidence to the contrary, going so far, indeed, as to lead two of the judges in the court below to deem it necessary and appropriate to characterize the opinion as exceeding the bounds of fair and neutral analysis governing quasi-judicial deliberations, saying "To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose" (R 1758)

But, notwithstanding its zeal, the opinion does not go so far as to find that the management or policies of petitioner are, or ever were, subject to a controlling influence of North American. It goes no further than to say that "North American has the power—if the occa-

sion arises and if it so desires—to make its influence felt in a substantial and affirmative manner" (R 1922).

This statement is to be read in light of the fact that the Commission admits the entire absence of intercorporate dealings in the past (R 1910), admits that there have been no attempts[1] by North American to influence the management or policies of petitioner (R 1920), and makes no attempt to suggest that there is any ground for supposing that intercorporate dealings or attempts to exercise influence are likely to occur in the future.

The Commission's finding, in short, is not, and does not pretend to be, anything more than a purely hypothetical prediction that if at some future time occasion should arise (although none has ever arisen in the past), North American could exercise a degree of influence in petitioner's affairs which it would then be proper to characterize as "substantial".

That the use of the word "controlling" in the Act was deliberately intended to exclude jurisdiction over public utilities subject to a degree of influence less than controlling, is shown by the fact that the test prescribed in the bill as originally introduced was "material" influence, which was later changed to "controlling" influence (H.R. 5423, 74th Congr. 1st Sess., 1935, p. 7; S. 1725, 74th Congr., 1st Sess., 1935 pp. 7-8).

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[1]Except one wholly ineffectual attempt to induce the directors to reconsider a dividend reduction, discussed above, p. 18, and below, p. 74.

The Commission's inclusion under the Act of local utilities merely subject to the possibility of substantial future influence is to be contrasted with the assurances given to Congress by the sponsors of the Act, that regulation of "subsidiaries" was within the powers of the Congress, and was appropriate, because the "subsidiaries" referred to were "those whose policies are determined completely by the registered holding company", and that the transactions between parent and "subsidiary" to be regulated under the Act were "decisions of the holding company itself sitting, through its representatives, on both sides of the table" (supra, p. 29).

In this respect, therefore, the Commission violated the frequently announced principle governing interpretation of such statutes that Congressional intent to invade the traditional domain of the States is never assumed unless, and except so far as, its intention to do so is clearly expressed. *Illinois Central R. Co. v. Commission,* 245 U.S. 493, 510; *Palmer v. Massachusetts,* 308 U.S. 79, 84; *Fed. Trade Comm. v. Bunte Bros.,* 312 U.S. 349, 354; *City of Yonkers v. United States,* 320 U.S. 685, 690; *Davies Warehouse Co. v. Bowles,* 321 U.S. 144, 153.

We submit that the Commission's virtual elimination from the Act of the word "controlling" requires, without more, that its order herein be set aside, since plainly it cannot be said that the Commission would have found that absence of controlling influence had not been shown had it not been for the Commission's

view that the influence spoken of in the Act need not be controlling influence.

The "Controlling Influence" Must Be Sufficiently Powerful to Bring About the Evils Condemned by the Act.

The quantum of controlling influence over the management or policies of the local utility which is necessary to fulfill the requirements of the section, is obviously such controlling influence as will enable the holding company so to influence the management or policies of the public utility as to permit it to bring about the evils which are condemned by the Act and which it was enacted to prevent.

Section 1(c) of the Act declares it to be the policy of the Act "in accordance with which policy all of the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section."

The examiner found specifically that none of the facts or conditions enumerated as evils in the Act, exist with respect to Pacific Gas (supra, pp. 14, 19).

There is a total absence of any evidence in the record, and the Commission makes no attempt to find, that North American possesses such a measure of influence over the management or policies of Pacific Gas as would enable it to bring into existence any of the evils condemned by the Act, or calling for the subjection of Pacific Gas to the Act in order to "meet the problems" or "eliminate the evils as enumerated in this section" (Section 1c).

The Commission in an earlier proceeding involving Section 2(a)(8) (*Manchester Gas Company,* 7 S.E.C. 57, 62) recognized that a controlling influence must be such as to bring about the evils at which the Act is directed, saying:

> "If the 'controlling influence' is sufficiently extensive to embrace the power to bring about the evils that the Act is designed to guard against, the statutory standard under Section 2(a) (8) is satisfied."

Assuming for the purpose of the argument that no showing need be made of the present existence of the evils, there still must be some substantial evidence before the Commission that there is such a controlling influence as would enable the holding company to bring about the evils enumerated in the Act. There is no such showing in this case.

In view of the express statutory provisions as to what affects the public interest, and the failure of the Commission to find that any of the enumerated statutory evils exist or can be brought about by any influence of North American, we submit the Commission's denial of the declaration upon the ground that Pacific Gas had not "demonstrated" that granting it would not be adverse to the public interest, was founded upon a misconstruction and misapplication of the Act, was not supported by substantial evidence, and was, therefore, arbitrary and without authority of law.

II.

THE COMMISSION'S ORDER IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, AND IS CONTRARY TO ALL THE EVIDENCE.

That the order of the Commission was arbitrary and not supported by any substantial evidence is clearly demonstrated in Judge Garrecht's dissenting opinion in which Judge Mathews joined. The opinion is printed at page 1741 (Vol. V) of the record, and we ask particularly that it be read.

Judge Garrecht described the Commission's treatment of the evidence thus:

> "We call attention to the fact that the findings and conclusions of the Commission are based on inference and surmise in many instances in absolute conflict with the testimony which was uncontradicted and not discredited." (R 1747)
>
> "To reach the conclusion arrived at by the Commission every circumstance is viewed with a hostile eye and every instance tortured into some semblance of sinister purpose." (R 1758)
>
> "There are other instances where the Commission very frankly has interpreted the testimony of the witnesses contrary to their evidence. These interpretations, which are exaggerated into some semblance of an argument, are then designated as inferences of the Commission as to 'events which might happen' but 'not what actually happened'." (R 1761)
>
> "It is also clear that the vague, artificial tests here employed are not sanctioned by the Act. Nor was it expected that inferences based upon in-

ferences, or suppositions, or even possibilities, would be substituted for substantial evidence." (R 1771)

"To sustain the Commission on the record here would require us to hold, as the court did on the first hearing, that its determination of what is necessary in the public interest is a matter within the uncontrolled discretion of the Commission. This is not the proper interpretation of the statute and counsel representing the Commission do not so contend." (R 1775)

The Act Provides for Full Judicial Review.

Section 24(a) of the Act provides that any party aggrieved by an order of the Commission may obtain review thereof in the Circuit Courts of Appeals. (Appendix, p. 13)

The scope of review provided for is complete; the court has the power, and therefore the duty when appropriate, to stay the order pending review and to direct the Commission to receive additional evidence "in such manner and upon such terms and conditions as to the court may seem appropriate". The court must determine whether the findings of fact are supported by substantial evidence; and may "affirm, modify or set aside such order, in whole or in part."

As presently shown, the court has the power and duty of examining the whole record and ascertaining for itself whether there are material facts not reported by the Commission. It may either return the case to the Commission, with directions to make additional

findings, or if satisfied that the facts are clear, may modify or set aside the Commission's order and finally dispose of the matter.

The provisions for judicial review follow closely those in Section 5 of the Federal Trade Commission Act, the scope and effect of which were well settled when the Holding Company Act was enacted.

In *Federal Trade Commission v. Curtis Publishing Co.*, 260 U.S. 568, 580, this Court said:

> "Manifestly, the court must inquire whether the Commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying or setting aside an order, the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission. If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the Commission —the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act."

This passage was quoted with approval in *Internat. Shoe Co. v. Federal Trade Commission*, 280 U.S. 291,

297. See also *Ford Motor Co. v. Labor Board,* 305 U.S. 364.

Fair Consideration of the Evidence Is Essential to Due Process of Law.

This Court has repeatedly declared that decisions like that of the Commission in the present case must be based upon a fair and neutral examination of the evidence.

In *Ohio Bell Tel. Co. v. Commission,* 301 U.S. 292, 304, Mr. Justice Cardozo said, speaking for the Court:

> "Regulatory commissions have been invested with broad powers within the sphere of duty assigned to them by law. * * * Indeed, much that they do within the realm of administrative discretion is exempt from supervision if those restraints have been obeyed. All the more insistent is the need, when power has been bestowed so freely, that the 'inexorable safeguard' (*St. Joseph Stock Yards Co. v. United States,* 298 U.S. 38, 73) of a fair and open hearing be maintained in its integrity. * * * The right to such a hearing is one of 'the rudiments of fair play' (*Chicago, M. & St. P. Ry. Co. v. Polt,* 232 U.S. 165, 168) assured to every litigant by the Fourteenth Amendment as a minimal requirement. * * * There can be no compromise on the footing of convenience or expediency, or because of a natural desire to be rid of harassing delay, when that minimal requirement has been neglected or ignored."

In the *Chicago Junction* case, 264 U.S. 258, 265, Mr. Justice Brandeis said:

> "The provision for a hearing implies both the privilege of introducing evidence and the duty of deciding in accordance with it. To refuse to consider evidence introduced or to make an essential finding without supporting evidence is arbitrary action."

Again, in *Morgan v. United States,* 298 U.S. 468, 480, the Court, speaking through Chief Justice Hughes, said:

> "The requirement of a 'full hearing' has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The 'hearing' is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action."

The scope of review of administrative orders for procedural errors is summarized in the concurring opinion of Mr. Justice Brandeis in *St. Joseph Stock Yards Co. v. United States,* 298 U.S. 38, 74, as follows:

> "Moreover, where what purports to be a finding upon a question of fact is so involved with and dependent upon questions of law as to be in substance and effect a decision of the latter, the Court will, in order to decide the legal question, examine the entire record, including the evidence if necessary, as it does in cases coming from the highest court of a State. It may set aside an order for lack of findings necessary to support it, or be-

cause findings were made without evidence to support them; or because the evidence was such 'that it was impossible for a fair-minded board to come to the result which was reached', or because the order was based on evidence not legally cognizable; or because facts and circumstances which ought to have been considered were excluded from consideration; or because facts and circumstances were considered which could not legally influence the conclusion; or because it applied a rule thought wrong for determining the value of the property." (Cases cited are omitted)

The Commission Ignored or Slighted the Mass of Direct Evidence Showing Absence of Control, and Based Its Decision on Speculative Inferences.

As presently shown, the Commission's decision is based entirely on highly speculative inferences contrary to direct and persuasive evidence. These inferences, moreover, are reached by marshaling every slightest circumstance that can even plausibly be brought forward for the purpose, and then seeking to draw inferences therefrom almost completely without reference to the mass of direct evidence which shows, as we submit, that no inference of the existence of controlling influence can be drawn.

No weight whatever is given to the fact that no act in the past of either North American or Pacific Gas even suggests the existence of influence over petitioner, whether controlling or other.

This treatment of the evidence violates well settled principles. As this Court said in *West Ohio Gas Co.*

v. Commission, 294 U.S. 79, 81, to ignore the experience of the past in favor of a contrary prediction of the future "is as much arbitrary action as to build a schedule upon guesswork with evidence available".

We show, moreover, that even considered alone, the facts upon which the Commission rests its inferences are entirely consistent with the lack of controlling influence, which lack is shown by direct evidence which the Commission depreciates or ignores entirely. In appraising circumstantial evidence, "the trier of fact must recognize the distinction between that which is mere conjecture and what is a reasonable inference". (*Home Ins. Co. v. Ry. Co.,* 18 Wash. 2d 798; cases in accord, 32 C.J.S. 1101.)

A fact cannot be established by inference from circumstances which are consistent with direct and unimpeached evidence that the fact does not exist (*Penn. R. Co. v. Chamberlain,* 288 U.S. 333, 339; cases collected, 23 C.J. 50; 32 C.J.S. 1102).

The Findings and Conclusions of the Examiner That No Controlling Influence Exists, Are of Substantial Significance.

The trial examiner heard all the testimony and observed the demeanor of the witnesses;[1] the Commission, on the other hand, considered and decided the case merely on the basis of the record and the arguments of counsel. The examiner's judgment of

[1]The examiner found "The responses of all the witnesses, officers and directors of the applicant were responsive, comprehensive and frank." (R 1851)

the weight to be given to the testimony, and the inferences to be drawn therefrom, is therefore entitled to great weight; and his conclusion, based on detailed findings, that North American does not have a controlling influence over the management or policies of petitioner, is therefore an important circumstance bearing on the validity of the Commission's decision. *A. E. Staley Mfg. Co. v. Natl. Labor Rel. Board* (C.C.A. 7th), 117 F.2d 868, 878; *Burlington Dyeing & Finishing Co. v. Natl. Labor Rel. Board* (C.C.A. 4th), 104 F.2d 736, 738; *Conn. v. Natl. Labor Rel. Board* (C.C.A. 7th), 108 F.2d 390, 400; *Wilson & Co. v. Natl. Lab. Rel. Board* (C.C.A. 8th), 123 F.2d 411, 418; *Internat. Ass'n. v. Nat. Lab. Rel. Board* (Ct. App. D. C.), 110 F.2d 29, 34.

The Examiner's Findings and the Commission's Opinion Reveal the Lack of Basis for the Order.

Since the Commission (R 1912) accepted the facts as found by the trial examiner, a comparison of the examiner's findings with the Commission's opinion is substantially all that is necessary in order to determine whether the Commission's order is based on a fair and reasonable examination of the evidence before it, and whether the order is supported by substantial evidence.

A comparison of the examiner's undisputed findings with the matters set out in the Commission's opinion shows that some of the Commission's inferences are wholly unsupported, that the reasonable appearance of others results only from the Commission's failure to mention direct evidence showing that they are not permissible inferences, and that some of the statements

made in the Commission's opinion must be characterized as lacking in candor.

1. The Commission found that the California Railroad Commission "appeared by its representative to introduce in evidence a memorandum and other documents showing the extent of such Commission's regulation over PG&E" (R 1885)

No mention is made of the fact that the Railroad Commission appeared at the suggestion of the Commission, and that the memorandum filed by it not only showed that Pacific Gas was regulated in all phases of its business, but also concluded with the following:

> "Yet, as also stated in the beginning, we are aware of no instance during the course of this Commission's regulation of Pacific Gas and Electric Company when its management or policies appear to have been either controlled or influenced by North American Company. We may add that we perceive no public interest existing within the State of California, either for the protection of investors or consumers, which compels the conclusion that applicant, Pacific Gas and Electric Company, should be declared subject to the obligations and duties imposed by the federal Holding Company Act upon subsidiary utility corporations." (F 170, R 1875)

2. The Commission recited that Pacific Gas directors, who were apprehensive of the power that North American would acquire by the ownership of such a large block of securities, were informed that North American had given assurances that it would not interfere with Pacific Gas's management (R 1893).

No mention is made of the wealth of testimony and of the findings of the examiner based thereon that—

> "Applicant's president stated to North American representatives that neither he nor Applicant's directors would agree to any transaction which would jeopardize the control of Applicant by local directors who had developed Applicant's properties over the past 75 or 80 years, but that he had satisfied himself that the transactions would not jeopardize that control. It was realized by North American that if it made the sale, it would be giving up control of its California subsidiaries, but that North American would be in the position merely of an investor. North American, through its representative only, gave assurance to Hockenbeamer that it did not desire to acquire control of Applicant, and would not attempt to interfere with the management or policies of Applicant, but would consider itself merely as an investor. This was reported to Applicant's directors. It was only after Mr. Hockenbeamer had advised Applicant's Executive Committee and its Board of Directors of these assurances by North American, that the purchase was authorized, and it would not have been authorized unless such assurances had been given" (F 66-7, R 1821).

3. The Commission found that "It was orally agreed that North American would be entitled to three members on applicant's board" (R 1895).

No mention is made of the fact that, as found by the examiner, this is the number of directors North American could elect by cumulative voting of its own shares (F68, R 1823).

4. The Commission states in connection with the acquisition of Great Western and San Joaquin that "Most of the employees of the acquired companies were retained, some of them in high executive positions which they still hold. Very soon after the acquisition of securities, the properties of the newly acquired subsidiaries were consolidated with those of applicant" (R 1895).

No mention is made of the facts, as found by the examiner, that the properties were incorporated into the Pacific Gas system under the direction of Paul M. Downing, Vice-President and General Manager of Pacific Gas, "without participation of North American or its subsidiaries in any decision with respect to personnel or otherwise"; that unnecessary personnel was eliminated; that the offices of the subsidiaries were moved to the Pacific Gas office, and that concurrently with the taking over, "all indebtedness, contracts, procedures, arrangements and relationships previously existing between said acquired companies and North American and its subsidiaries were cancelled and terminated, and all North American representatives on the Boards of the acquired companies resigned so that thereafter the only connection North American had with applicant was that of stockholder" (F 73, R 1825); nor is any mention made of the fact that previous to the acquisition North American supervised and controlled the acquired companies in almost every detail, and was paid therefor sums aggregating approximately $50,000 per year, which payments, and all supervision and management terminated at the

time of the sale (F 77-82, R 1827); nor is mention made of the fact that North American had owned its interest in Great Western and San Joaquin for a period of less than five years prior to the sale.

5. The Commission stated the number of shares of stock and relative percentages held by stockholders resident within and without California (R 1898).

No mention is made of the fact, as found by the examiner, that "58,472 shareholders, owning 4,705,948 shares, reside in the territory served by Applicant" (F 30, R 1799); that this constitutes more than 40% of the outstanding stock; and that Pacific Gas has sold directly to purchasers without underwriting more than $140,000,000 par value of its stock, principally to residents of its territory, most of whom are consumers, with resultant improvement in public and consumer relationship (F 33, R 1801).

6. The Commission found that "at only two meetings, both in 1931, were enough shares in attendance, in addition to the shares held by North American, to constitute a quorum" (R 1898).

No mention is made of the fact, as found by the examiner, that "If North American had not been represented at the remaining meetings, or had withdrawn therefrom, a quorum could probably have been obtained (without the representation of North American) by sending out an additional notice—as an attendance of 75% or more of the stockholders could have been and can be obtained for any stockholders' meeting by sending out a second notice" (F 107, R 1843).

7. The Commission states the number of members of the Pacific Gas Board and that the present board consists of "five directors who are officers and full-time employees of applicant, eight directors who are prominent San Francisco businessmen, and two directors who are admittedly representatives of North American" (R. 1899).

No mention is made of the following facts, as found by the examiner: "This Board of Directors is composed of a group of very intelligent men of initiative, independence and ability" (F 122, R 1851); that "All present Directors and principal officers, with the exception of Directors Fogarty and Freeman (who are officers of North American), are residents of San Francisco and vicinity; were either born in California or came to California early in life and have resided in California since that time; are prominently identified with California enterprises, and have no substantial interest in any eastern business or any corporation whose business is not principally conducted in California. * * * Many of the present directors were connected with utilities which were merged with Applicant, or its predecessors, and the fathers of four directors (Directors C. O. G. Miller, Norman B. Livermore, A. E. Wishon and W. W. Crocker) were active in the affairs of predecessor companies. All of the directors, with the exception of Directors Fogarty and Freeman, know each other well, some are associated together in other enterprises, and several have known each other from boyhood" (F 38-40, R 1807); nor is any mention made of the large number of shares

which almost all of the directors (excepting the two North American representatives) own personally, or which are owned by family and affiliated interests (F 37, R 1804).

8. The Commission found that Earl (a North American representative) "was very active as a director and executive committee member, attending substantially all the meetings. * * * For these services Earl received a salary of $12,000 per year from North American; he received no salary from PG&E" (R 1900), the implication being that Earl was influential in Pacific Gas affairs and that he was paid $12,000 solely for these services.

No mention is made of the fact, as found by the examiner, that while Earl "was a regular attendant at meetings he never expressed any views regarding North American attitude on pending matters"; and that while he received a salary of $12,000 per year from North American, this was "largely in recognition of his long past service as an officer of Great Western" (F. 86, R. 1831). Nor is mention made of the fact that the evidence showed that while Mr. Earl was active in taking notes of the proceedings at the meetings, he was no more active or important as a participant in such meetings than any other director (R 669, 732).

9. The Commission states that on Earl's death "Black and Hockenbeamer discussed a possible successor to Earl but arrived at no solution, and shortly thereafter Black became applicant's president. No

one has since been appointed to carry on the duties formerly performed by Earl" (R 1901). This carries the innuendo that there was some connection between the failure to appoint a successor to Earl, and the fact that Mr. Black became President of Pacific Gas.

No mention is made of the fact, as found by the examiner, that the reason no successor was appointed to Earl was that arrangements had been made that "copies of the minutes and reports submitted to the Executive Committee would be sent to the Directors named by North American—hence they would be as well informed as if a representative were present. North American's decision not to ask that Mr. Earl be succeeded by a North American representative was made prior to Mr. Black's election as president and was not due in any way to Mr. Black's election" (F 87, R 1831).

10. The Commission recites "None of the applicant's other large stockholders [except North American] has representation on the board, with the possible exception of Pacific Lighting Corporation" (R 1901), thus implying that the directors do not own or are not associated with large stockholdings.

No mention is made of the fact, as found by the examiner, that with the exception of Vice-President and Secretary Foote, all of the Directors (excepting North American Officers), including the Pacific Gas officers, own a substantial number of its shares and that six of them hold directly and by family and affiliated interests in excess of 90,000 shares each (F 37, R 1804).

11. The Commission states "Applicant's president has always been its chief executive officer * * *. Since November 20, 1935, Applicant's president has been James B. Black, formerly the vice-president of North American whose job it was to keep close watch over North American's interest in applicant" (R 1902), thus insinuating that Black, a former North American officer, holds a dominating position in Pacific Gas, and that he watches over North American's interest.

No mention is made of the fact, as found by the examiner, that "Throughout its history, Applicant's operations have been under the immediate supervision of an officer designated as Vice-President and General Manager", a position then occupied by P. M. Downing, an employee of applicant since its organization; that the principal executives of Pacific Gas have been connected with it for many years and are very active in its affairs and in the formulation of its policies, acting through committees and otherwise (F 43-51, R 1809); that its Executive Committee and Board of Directors are extremely active, and that neither the Board nor the Executive Committee are dominated by any individual or group, but there is free and full discussion in which each member and the officers in attendance participate (F 35-36, R 1802).

Nor is mention made of the fact, as found by the examiner, that "There was and is no understanding or agreement (between Mr. Black and North Ameri-

can) that Mr. Black would consult with North American, or keep it advised, or in any way act for or in relation to it, after he became president of Applicant, nor is he in any respect the representative of North American. Mr. Black, as President and Director of Applicant, has not acted as a representative of North American, nor has he been controlled or influenced by that company, or by any of its officers" (F 118-119, R 1849).

12. The Commission states in connection with the election of Mr. Black as President, that the Directors testified they selected Mr. Black "because he was a comparatively young man, a Californian who was familiar with the Great Western properties as both an operating man and an executive, and because his experience in New York had given him excellent training in utility financing" and that Director Miller "called Fogarty (Black's superior at North American) to get his permission to approach Black, and then called Black to ask whether Black would accept the presidency if the board elected him" (R 1903).

No mention is made of the fact, as found by the examiner, that "No suggestion of Mr. Black's election was made by anyone in North American, by whom his selection was not anticipated, and to whom it was a surprise" (F 116, R 1847); that Mr. Black was brought to California "at the age of 12 when his parents moved there to reside and has lived in San Francisco and vicinity ever since, with the exception of the period from 1927 to 1935 when he resided in New York and served as a Vice-President of North

American" (F 111, R 1844); that he was educated in Oakland and San Francisco schools and at the University of California; that on graduation in 1912 he became an employee and later an officer of a subsidiary of Great Western and continued with that company until he went to New York and became a Vice-President (but not a director) of North American; that he remained in New York from 1927 to 1935 when he was elected President of Pacific Gas; that "His selection was entirely the result of the initiative of Mr. C. O. G. Miller and other California directors, many of whom had become acquainted with Mr. Black's capabilities prior to 1927 when he was in active charge of Great Western, an active competitor of Applicant. Several of these directors were prepared to suggest Black if Miller had not done so. The fact that he was a Californian and was familiar with some of Applicant's properties, as well as his wide experience and youth were deemed qualifications, and his selection met with the unanimous approval of the Board of Directors. Mr. Black was also recommended to Mr. Miller by a number of large stockholders" (F 113-115, R 1845-7). * * * "Prior to his election, it was agreed between the directors and Mr. Black that he would completely sever all relationship with North American and its affiliates. This he did in November 1935 just prior to his election as Applicant's president. He thereupon moved his residence back to California where he has since resided" (F 117, R 1848).

13. The Commission states, respecting Mr. Black, that "Since he has been president, Black has nomi-

nated as directors five local men and two representatives of North American * * * Black and Fogarty testified that Black did not discuss with North American whom he would nominate as local directors" (R 1903), thus implying that such directors were selected solely by Mr. Black.

No mention is made of the fact, as found by the examiner, that new directors are selected by the President "with advice and approval of other board members. Nominees for election as representatives of North American have been designated by it" (F 54, R 1815).

14. The Commission relates in some detail the procedure in connection with the proxy committee for the stockholders' meeting (R 1904).

No mention is made of the fact, as found by the examiner, that "Neither North American nor any of its officers have ever made any suggestion or request, or been consulted with respect to the form of proxy, the proxy machinery, or the stockholders' meetings. North American never suggested the name of any person to serve on the proxy committee" (F 143, R 1857).

15. The Commission devotes almost two pages to a description of Pacific Gas financing (R 1905).

No mention is made of the fact, as found by the examiner, that "North American has never underwritten any securities issued by Applicant, nor participated in any way in its financing. It has not been consulted, nor has it made suggestions as to who should be the underwriters of Applicant's securities, who

should be the members of underwriting syndicates or participated in any discussions or negotiations relating to any underwriting, except that in 1935, Mr. Black (then with North American) suggested to Mr. Hockenbeamer that Blyth & Co. be given the leadership of a syndicate then being formed because Blyth & Co. was a California house. Mr. Hockenbeamer chose Lazard Freres & Co., Inc. All negotiations respecting the issue and sale of Applicant's securities have been conducted in San Francisco by the President of Applicant directly with the underwriters" (F 154, R 1868). Nor is any mention made of the fact that Blyth & Co., Inc., the underwriter of the securities issued since Mr. Black became President, has its principal office in San Francisco, and that Mr. Blyth, its president, "has been a close friend for many years of most of applicant's directors and is well known to all of them" (F 149, R 1864); and that "North American had nothing whatever to do with the selection of Blyth & Co. as underwriter" (F 152, R 1867).

16. The Commission devotes two pages to a topic headed "Reports to North American" and states that "Applicant regularly sends to North American a variety of detailed weekly and monthly reports". These reports are described in great detail (R 1907).

No mention is made of the fact, as found by the examiner, that these reports are not sent to North American as the Commission states, but are sent to the officers of North American who are directors of Pacific Gas, and are sent to them in that capacity.

No mention is made of the fact, as found by the examiner, with respect to these reports that "The officers of North American who are directors of Applicant receive periodical reports from Applicant, such reports being in substance the same that have been received pursuant to and since the 1930 sale * * * These reports convey less information than is received by the directors and members of the Executive Committee who are persent at such meetings" (F 94, R 1835) and "There is no difference between the information received by North American nor in the other relations with PG&E since Mr. Black became president of Applicant, and those received, or that existing before that time" (F 96, R 1838).

17. The Commission states that "North American has never requested any information from Applicant which has been refused to it"—the implication being that such information is frequently requested and supplied (R 1909).

No mention is made of the fact, as appears from the record, that practically no requests for information have been made by North American since it has been a stockholder, and that, as found by the examiner, at present and in the past the communications and contacts between North American and its officers and Pacific Gas and its officers have been infrequent and unimportant (F 91, R 1834).

18. The Commission sets forth under the heading "Telephone Calls and Personal Visits" that there are four to nine long distance telephone conversations each year (R 1910) and infrequent visits.

The Commission does not state, as found by the examiner, that "At present and in the past, the communications and contacts between North American and its officers and Applicant and its officers have been infrequent and unimportant" (F 91, R 1834).

19. The Commission finds that Pacific Gas "* * * does not as a routine matter receive advice on rates, accounting, engineering, tax matters, sales, depreciation, personnel, and other similar operating matters. It does not participate in North American's group purchasing arrangements and there have been no monetary loans between the companies" (R 1910).

The implication of this is that Pacific Gas does receive from North American, advice on the subjects mentioned but not as a routine matter. This is not only entirely unsupported by evidence; it is directly contrary to the evidence.

No mention is made of the fact, as found by the examiner, that North American does not give and never has given any advice to Pacific Gas on any of the matters mentioned and that "Neither North American nor its officers have made any suggestions or recommendations with respect to pending matters under consideration by Applicant, nor have they attempted at any time to influence Applicant's action or the action of any director in any respect" (F 98, R 1838); that "Mr. Black has never received any request or instructions from North American or its officers, respecting the personnel, business affairs or policies of Applicant * * *. Mr. Black has never

sought or received the advice, approval or recommendation of North American or its officers on any personnel, dividend, rate, salary, refinancing or other pending matter" (F 120, R 1849); nor is any mention made of the following (which subjects in other control cases, under the Act, have been prominently mentioned by the Commission as indicating the presence or absence of control):

a. "There have been no contracts between Applicant and North American or its subsidiaries except the contract dated March 29, 1930" (F 131, R 1855).

b. "Neither North American nor any of its affiliates or employees has ever performed any services with or without charge, for Applicant" (F 132, R 1855).

c. "There has been no exchange of operating information between Applicant and the admitted subsidiaries of North American" (F 133, R 1855).

d. "There have never been any intercompany loans or financial transactions between Applicant and North American or its subsidiaries" (F 134, R 1855).

e. "All of Applicant's major acquisitions and construction projects have been and are decided upon, budgeted and carried out within the PG&E organization and entirely independent of North American at all stages" (F 135, R 1855).

f. North American's organization has never assisted Applicant in the preparation of any Registration Statements, nor has its Secretarial Department

ever assisted Applicant in any manner (F 136-7, R 1855).

g. "Applicant and North American do not employ the same accountants, attorneys or engineers" (F 138, R 1856).

h. "Applicant does not employ any former officers or employees of North American, with the exception of Mr. Black, and with the exception of those who were officers or employees of acquired companies at the time of their acquisition. North American has never recommended or suggested to Applicant the employment of any person or been asked its views thereon" (F 139, R 1856).

i. "No employees of Applicant, nor of North American or of its admitted subsidiaries have ever been loaned by either to the other" (F 140, R 1856).

20. The Commission states: "Evidence has been offered with respect to only one occasion when North American's wishes on a particular matter appear to have been contrary to the action of Applicant's directors" (R 1911)—referring to the dividend incident in 1933 when North American requested that Pacific Gas directors reconsider their action in reducing the common stock dividend and the directors declined to do so.

The implication of the Commission's statement is that on other occasions North American did express its wishes and that the Applicant's directors acted in accordance with such wishes.

The implication of the Commission's statement is wholly unsupported by any evidence, and is directly contrary to all of the evidence and the findings on the subject, which are that North American never expressed any wishes to the Board of Directors or any officer on any matter other than this particular one. No mention is made of or effect given to the findings of the examiner that "Mr. Black has never received any request or instructions from North American or its officers, respecting the personnel, business, affairs or policies of Applicant, and North American has never made any attempt, directly or indirectly, to control or influence his action or the management or policies of applicant" (F 120, R 1849). Numerous other findings by the examiner are to the same effect—negativing, specifically, every conceivable variety of attempt to influence Pacific Gas on any matter (see F 98, R 1838, F 99, R 1839, F 120, R 1849, F 126, R 1852, F 139, R 1856, F 145, R 1857, F 170, R 1875), except on the matter of the dividend reduction, when its attempt to influence the directors to maintain the regular dividend was entirely unsuccessful.

21. The Commission recites the circumstance in 1933 when Pacific Gas reduced its dividend and North American's request for a reconsideration was not acceded to. In that connection the Commission states that in the fall of 1936 "Black recommended the restoration of the $.50 per share dividend. He testified that the earnings justified the restoration and denied

that North American requested the action" (R 1911). The implication is that Mr. Black may have recommended the restoration because of his previous connection with North American.

No mention is made of the fact, as found by the examiner, and as shown in finding 24 that the annual earnings of Pacific Gas, which had fallen to $1.61 per share in 1933 when the dividend was reduced, had increased to $2.71 per share in 1936 when the dividend was restored; nor of the fact, as found by the examiner, that "Mr. Black has never received any request or instructions from North American or its officers on any * * * dividend * * * or other pending matter" (F 120, R 1849); or that "Mr. Black, as President and Director of Applicant, has not acted as a respresentative of North American, nor has he been controlled or influenced by that company, or by any of its officers" (F 119, R 1849).

22. The Commission states that "The facts are strikingly similar" in this case to those in *Detroit Edison Co. v. Securities & Exchange Commission,* 119 F.(2d) 730.[1] What purports to be a statement of the facts in the *Detroit Edison* case is then set forth.

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[1]Judge Garrecht in his opinion says: "A glance at these cases (the *Detroit Edison* and *Hartford* cases) will show how utterly different were the facts there presented" (R 1763), and further with respect to the *Detroit Edison* case, "the facts in that case are so different from the one before us—that it cannot be considered an authority to support the action of the Commission here" (R 1765).

No mention is made by the Commission of the following facts in the *Detroit Edison* case,[1] which are disclosed by the Court's opinion in that case, and which furnish the basis for its decision:

> In 1902 a North American officer, with the assistance of Dow, later president of the Detroit Edison and a powerful figure in its affairs, arranged for the sale to North American of the stocks of the principal electric utility companies then operating in Detroit, Dow being paid by North American for his services and with the understanding that he was to manage the properties indefinitely.
>
> North American caused Detroit Edison to be incorporated, the organization meeting being held in North American's office. The legal details were handled by Sullivan & Cromwell, then and now the North American's attorneys, and then and now Detroit Edison's attorneys, and at all times with a member of the firm on the latter's board.

[1]The facts in the *Detroit Edison* case were summarized by counsel for the Commission in its brief filed therein as follows: "It is difficult to conceive of a case in which the facts are more conducive to an affirmative conviction of corporate control, than one which shows (1) admitted North American control at organization, (2) a plurality at all times of directors whose directorships are traced directly to North American, (3) absence of representation, in the management of the Edison company, of any substantial stockholder other than North American, (4) actual prevention of other stockholder representation, even representation of a stockholder owning more stock than North American, (5) numerous acts of participation, direct and indirect, on the part of North American in the affairs of the controlled company."

North American named all the members of Detroit Edison's first board. At the time of the hearing, four of the eight directors had been named by or were affiliated with North American. At least half and perhaps a majority of the present board are either associated with North American or derive their connection with Detroit Edison from North American.

The personal stockholdings of Detroit Edison's officers and directors are negligible, and they have no relation to any other substantial stockholder, besides North American. No stockholder other than North American ever appears to have designated a director.

North American was the original underwriter for Detroit Edison securities; it has managed, or participated in, or been invited to participate in, all Detroit Edison financing, and has made large profits therefrom. It was Detroit Edison's fiscal agent from the time of its organization until 1935.

When United Light and Power Company began to purchase Detroit Edison stock, North American increased its holdings. When United attempted to secure representation on Detroit Edison's board, the attempt was successfully resisted by Detroit Edison's management, led by Dow.

Detroit Edison has always maintained offices in North American's building in New York. For years it participated in joint purchasing contracts with North American and the latter's acknowledged subsidiaries, as well as maintained representation on the Station Advisory Committee made up of representatives of North Ameri-

can's subsidiaries. For the purpose of avoiding the application of the Public Utility Holding Company Act, various of these connections were terminated when the Act became law. In addition (not mentioned by the Court but found by the Commission) the offices of North American in New York and those of Detroit Edison in Detroit had been connected for many years by a private wire.

It was after all of these facts, and more, had been found, that the Commission and the court concluded that the Detroit Edison "had failed to carry its burden of proof."[1]

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[1]Orders of the Commission denying petitions for a declaration that a local utility was not a subsidiary of a holding company have been reviewed in four other cases, in each of which the order of the Commission was upheld. In some of these cases the court accepted the Commission's contention that absence of any control or controlling influence is a mere statutory exception to the intent of Congress to regulate all local utilities of whose voting stock 10% or more is owned by a holding company; but this proposition was unnecessary to the decision of any of these cases for the reason that in each of them the evidence showed the present existence of a controlling influence as we have here interpreted the meaning of those words; and the present existence of controlling influence was corroborated by a record of past transactions of the character which the Act was designed to regulate, other intercompany transactions, and exercise of controlling influence in the past. The cases herein referred to are: *Public Service Corporation of New Jersey v. S. E. C.*, 129 F.2d 899 (C.C.A. 3d); *Hartford Gas Co. v. S. E. C.*, 129 F.2d 794 (C.C.A. 2d); *American Gas and Electric Company v. S. E. C.*, 134 F.2d 633 (App.D.C.); *Koppers United Co. v. S. E. C.*, 138 F.2d 577 (App D.C.).

23. The Commission states "We agree with the finding of the trial examiner that the record does not reveal any past attempts by North American to interfere affirmatively with the management or policies of PG&E. But we also think that it is clear that the reason for this non-interference has been North American's complete satisfaction with the local management and that its failure to interfere has been purposeful" (R 1920).

No mention is made of the fact that every director of Pacific Gas, including those nominated by North American, as well as North American's president, testified that North American had no controlling influence over Pacific Gas and could not influence its management or policies if it did attempt to do so. The Commission's statement fails entirely to give probative effect to the unsuccessful attempt made in 1933 by North American to obtain a reconsideration of the Pacific Gas action in reducing its dividend. The mere fact that North American was satisfied with Pacific Gas' policies and management, while it might be used as an explanation for non-interference, does not prove, and is not a fact upon which an inference can be based, that North American, if it had been dissatisfied, could have exerted a controlling influence over Pacific Gas.

24. The Commission states "There is evidence to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a nega-

tive way. But our decision herein is based primarily on our finding that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner" (R 1922).

No basis is given for this finding other than the following:

a. North American owns 17.71% of the Pacific Gas voting stock, which is a much larger holding than any other stockholder (R 1923).

b. North American's stockholdings would make it a "formidable opponent" in any proxy fight; and "the mere fact that there is a strong possibility that North American could prevail would, in itself, be a potent tool in influencing the management to give heed to North American's wishes" (R 1924).

c. That with the help of North American, the present management could prevent any other group from gaining control of petitioner; that it could break a quorum, and might prevent a merger or consolidation (R 1924).

d. That Mr. Black, President of Pacific Gas, was for eight years prior to his appointment, "a senior executive of North American,"[1] and that "It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of PG&E" (R 1926).

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[1]Mr. Black was never a director of North American (F 114, R 1846).

No mention is made in connection with the foregoing assertions, that:

a. 48% of the voting stock of Pacific Gas is owned by Californians, more than 40% of all its shares being owned by residents of the territory which it serves, most of it bought directly from the Company without underwriting; that, as shown by the evidence and found by the examiner, the directors feel that Pacific Gas can best be managed by Westerners for Westerners (F 125, R 1852); that "North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting" (F 127, R 1852); that "Neither by absenting itself from stockholders' meetings nor by attempting to impose conditions for its participation or voting therein could North American control Applicant or subject its management or policies to a controlling interest, as its absence would not prevent the obtaining of a quorum, or if it did, the incumbent directors would remain in office and any vacancies would be filled by vote of the remaining directors" (F 128, R 1853); that "The maximum influence that North American could exert on the control, management or policies of Applicant * * * would be the naming of four North American representatives out of a board of fifteen directors" by cumulating its votes (F 129, R 1853).

b. As found by the examiner, North American does not own any stock in any companies which are large

stockholders in Pacific Gas, and has "never discussed or communicated with any of them, or the officers of any of them respecting the business and affairs of Applicant" (F 110, R 1844).

c. North American could not solicit proxies for a stockholders' meeting of Pacific Gas nor purchase any of its stock without securing the permission of the Commission. Since the purpose of the enactment of the Act was to restrict the control of local companies by holding companies, it is wholly unreal to suppose that six years after the enactment of the Act, it would be possible for a registered New York holding company to engage in a proxy battle with the local directors and management of a California utility, and secure control thereof. To suggest this is to imply that the Act is a failure and that the Commission would condone the attempt of the holding company to secure control of the local company.

There is not one iota of evidence in the record on which the Commission's speculative conclusion could be reached. On the contrary, there is direct and positive evidence that no such situation is possible.

Every director, and every principal executive officer of Pacific Gas appeared as a witness and testified under oath in terms or in substance and effect as follows:

a. That North American exercises no controlling influence over the management and policies of Pacific Gas, which are determined by its Board of Directors, all of whom (except Fogarty and Freeman) are well acquainted with each other,

regularly attend meetings and freely express their individual views respecting matters of management and policy.

b. That if North American were to attempt to control Pacific Gas or subject its management or policies to a controlling influence, its attempt would be unsuccessful.

c. That any attempt by North American to secure sufficient proxies to control a stockholders' meeting would have no chance of success, if opposed by Pacific Gas directors (other than Directors Fogarty and Freeman) (F 27, R 1797).

Each director (excepting Directors Fogarty and Freeman) also testified that he would oppose any attempt by North American to control or influence the management or policies of Pacific Gas (F 25, R 1852).

Mr. Fogarty, Chairman of the Executive and Finance Committees of North American (and a former President), President Shea and Vice-President Freeman of North American, all testified that they did not believe that North American could gain any such control or controlling influence.

The Commission ignores and fails to give weight or effect to the uncontradicted testimony of the directors, all of whom (except Fogarty and Freeman) testified that they were not subject to any such influence and would not submit to such influence were North American to attempt to exercise it. The Commission also ignored the presumption that these direc-

tors would fulfill their legal obligation to act as directors of Pacific Gas solely in light of what they sincerely believed to be in its best interests and not to exercise their offices as directors of Pacific Gas for the benefit of or subject to the domination of North American or any other individual stockholder.

The very findings of fact requested by Commission counsel prove this. The following is quoted from the requested findings, filed as part of the record, substituting, however, references to the pages of the printed record for references to the typewritten record.

> "100. Each of Applicant's local directors to whom the question was propounded, namely, Messrs. Miller, McKee, Crocker, Chickering, Livermore, Coghlan, Palmer, Nichols, McIntosh, Wishon, and Black, testified that it was his opinion that North American could not, if it attempted to do so and its attempts were resisted by the local directors, secure sufficient proxies to obtain a majority of the stock represented at a stockholders' meeting (R 619, 683, 718, 744, 827, 876, 911, 925, 951, 1006, 1103).
>
> "The several directors gave various reasons for their answers—Mr. Miller[1] stated:
>
> > 'I assume, of course, that the management of the Pacific Gas and Electric Company would remain proper and would attempt to fulfill its duties. The Board of Directors of the Pacific Gas has representatives of a number of groups of influential people in San Francisco. I think

[1]Chairman of the Board of Pacific Lighting Corporation, Trustee Stanford University, Director of many corporations, more than 40 years a public utility executive.

if those groups agreed on any course as being the proper one for the corporation to follow, and the management of the corporation was in accord with that, I think they could stand up against anything.' (R 619)

Mr. McKee[1] stated:

'I think it would not be. I think, on the scheme of cumulative voting, if there was a very large representation at the annual meeting they would be able to elect two or three directors, but if there was only 50% representation, 51% representation of stock present, they wouldn't be able to elect with their holdings more than five directors.' (R 683)

Mr. Crocker[2] stated that he thought it had

'been proven over a period of years that California corporations are best run in California and that the stockholders would react to that logic that it "would be a cinch" to persuade Applicant's stockholders that their interests would be better served by "California management than by North American Management".' (R 718)

Mr. Chickering[3] testified:

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[1]Chairman of the Board American Trust Company, former president The California Oregon Power Company, director of many corporations.

[2]President of the Crocker First National Bank of San Francisco and whose father had been a director of Applicant.

[3]A director of Southern Pacific Company and many other corporations, and experienced over many years in public utility management and affairs.

'Well, in the first place, the Pacific Gas and Electric Company is, and always has been a California Company, and not only I, but I think the public here generally are pleased with that situation. * * * They don't want any outsider dominating it. * * * In the next place I don't think that the holding company domination is at all popular; and in the next place, the North American Company is practically unknown out here, either for good or bad.

'The only time I ever heard it spoken of was when someone tried to bring it up in connection with some Fresno rate case quite a while ago.

'And furthermore, I think the California public are very well satisfied with the management of the P. G. & E. being in California, and in the hands of California men. I don't think they want any change, or any outside domination.' (R 744)

Mr. McIntosh:[1]

'Well, in the first place this company is a sort of California baby and Californians—I speak now because I was not born here—Californians have a sort of native son complex, and they don't like the interference of outside people.

'They are proud of their company because they have been connected with it through stock ownership for maybe a lifetime, most of them, many of them, and they would resent any outside interference of any character or kind.

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[1]Chairman of the Board of the Bank of California, and director of many other corporations.

'In the next place, it would be so simple to show that no good could possibly be expected to come from an alignment with the North American Company or any outside company, inasmuch as they were not—would not be able to furnish from any nearby source that they had any power to meet peak loads or anything of the kind. There would be no union of that kind.

'The Pacific Gas and Electric Company certainly couldn't be improved by any engineering counsel or advice that they could give. They certainly couldn't be helped materially by any financial advice that they could give and so there wouldn't be no end that would be beneficial to stockholders that could be gained by any such thing, and the stockholders could readily be told that and would be told that, or would know it themselves.

'Speaking of our "Native Son Policy", it is a matter of common record here that we have one of our large corporations, not incorporated in California either, that California has spanked as thoroughly as any corporation was ever spanked by anybody. It has become a political issue and campaigns were fought on it, but just as soon as somebody else on the outside started to accuse them of anything the entire outfit got up and defended them.

'Now, that is what I mean by the "Native Son Policy". These people are proud of this thing; it is their own. I have forgotten the figures, but I think something like between 45 or 50 per cent of the stockholders have California addresses.' (R 951)

Mr. Black testified that he would oppose any attempt by North American to control or influence the management or policies of the Applicant with 'every resource at my command' (R 1103) and that he was sure they would not be successful in proxy fight because

'This company has a rather unique position in San Francisco and in California. It has been known for many years as a California company. The fact that the Great Western Power Company was controlled by an eastern company, the Western Power Corporation, was a great handicap to the Great Western Power Company in doing business here and particularly in competition with the Pacific Gas and Electric Company. I know something of that feeling. I think 48 percent of our stock is held here in California and I think without question that stock would be almost unanimously opposed against any attempt by any eastern interest, particularly any New York holding company, to get control of the company.

'Our directors are men not only who are men who own, or are able to influence very large blocks of stock directly, but they have a standing in the community and in the business world which I think would be very decisive in getting large amounts of stock proxies from holders outside of the State. I am sure that the community as a whole would be entirely on the side of the company in any such fight.' " (R 1103)

The Requested Findings of Fact by counsel for the Commission (Findings 91, 92) also contain the following:

> "Mr. Fogarty (President of North American) testified that in his opinion the management and policies of Applicant were not subject to a controlling influence by North American (R 1449); that as a practical matter that company could not obtain legal control of Applicant; that he did not believe North American could acquire control of Applicant over the opposition of the local directors because the latter
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> 'is an old established California company. Its management has always been local. Its directors apparently are men of considerable standing, and undoubtedly would be able to obtain enough proxies from the stockholders to prevent the acquisition of control by any other interests that sought it.'" (1453)
>
> "Mr. Freeman, a Vice-President of North American, testified that if the time should ever come when North American felt that it should exercise a control or controlling influence over Applicant, in his opinion it would be better for North American to sell its interest than to try to exercise control.
>
> 'because the repercussions from California would hurt our investment far more than if we allowed it to be known that we were going to sell.';
>
> that with the present Board or any comparable Board composed of local people he did not believe North American could obtain control of Applicant

(R 1643); that if the management of Applicant became incompetent, in his opinion the North American could not cure it

> 'by trying to get into the situation ourselves. The most we could possibly do would be to consult with the other directors there and get them to agree to putting in a management that was competent; and if we were unable to do that, I am quite sure that our interests would be better served by getting out of the situation rather than trying to move in, because I don't believe a foreign interest, as we would be, could advantageously operate a company of the character of the P. G. & E.' (R 1645)

that because of the representation made in 1930 that North American would not interfere with the management of Applicant, in his opinion it was under a moral obligation not to do so as long as the local Board felt that they had the situation in hand and did not desire North American to interfere (R 645); that he was of the opinion that North American could not control Applicant or exercise a controlling influence against the wishes of the local directors unless it owned substantially 50% of the voting securities of Applicant, because

> 'in that company probably more than in any other company you would seem to have to have practically legal control before you could do anything that appeared to favor the controlling interest as against the rest of the stockholders. I am sure you would get a very strong reaction.' (R 1654)"

25. When the Commission suggests that "It is wholly unreal to suppose that Black would be uninfluenced" by North American because of his employment for seven years by it in New York (R 1927), it suggests an inference directly contrary to every bit of evidence of record. Not only did Mr. Black testify under oath that he had not been and could not be influenced by North American, but the North American officers testified to the same effect. Every director testified, as found by the examiner, that he has never "at any time observed anything which indicated that Applicant was controlled, directly or indirectly, by North American, or that its management or policies were subject to a controlling influence, directly or indirectly, by that company" (R 1852). The examiner found as a fact "There was and is no understanding or agreement * * * that Mr. Black would consult with North American or keep it advised, or in any way act for or in relation to it, after he became president of Applicant, nor is he in any respect the representative of North American" (R 1849); that "Mr. Black, as President and Director of Applicant, has not acted as a representative of North American, nor has he been controlled or influenced by that company, or by any of its officers" (R 1849).

The suggestion of the Commission that Mr. Black is subject to influence by North American,[1] because

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[1]The constant reference to the fact that Mr. Black was once an officer of North American is one of the most striking characteristics of the Commission's opinion, which refers

for a period of eight years, midway in his career, he was one of its officers, is not only most unfair to Mr. Black, but is entirely unwarranted by the evidence which shows, as found by the examiner (but not mentioned by the Commission), that Mr. Black is a Californian, has lived most of his life in California, was educated and brought up there, was selected as president by the California directors who had known him for many years; that his selection came as a surprise to and was not welcome to North American; and that Mr. Black agreed specifically in connection with his selection as president, to sever all relations with North American, which the examiner found as a fact, that he did.

26. The Commission makes no mention of the fact as found by the examiner, that the evils mentioned in Section 1 of the Act, and which the Act was enacted to prevent, do not exist with respect to Pacific Gas (F 27-33, R 1797; F 161-176, R 1873).

Summary.

The single issue was whether at the time of the hearing the management or policies of Pacific Gas were subject to the controlling influence of North American.

Voluminous evidence, oral and documentary, was presented to show that no such controlling influence

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to him by name more than 60 times. But no evidence or facts other than his employment by North American for 7 years are cited as forming any basis for an inference that he would be subject to North American influence.

existed. Every witness (and the witnesses included every director and officer of Pacific Gas and the principal officers of North American) examined on the subject testified that during the entire 11 years that North American has been a stockholder, there had never been any attempt by it to influence in any way the officers, directors, policies, actions, or management of Pacific Gas. They further testified that as of the date of hearing North American did not have any such controlling influence; that if it should attempt by proxy fight or otherwise to exert such an influence, the California directors would unanimously combat such attempt, and that such an attempt would be unsuccessful. All of these facts were specifically found by the examiner who heard all of the evidence and found that the responses of "all the witnesses, officers and directors of the applicant were responsive, comprehensive and frank" (F 122, footnote (70), R 1851).

The records of correspondence and telephone calls for the entire 11 years were examined by Commission representatives and not one iota of documentary or other evidence was produced, notwithstanding the extensive and searching examination of all witnesses by Commission counsel, to show any attempt to exercise a controlling influence over Pacific Gas, or which would support an inference that such a controlling influence existed.

Stripped to its essentials, it is clear that the Commission's conclusion that Pacific Gas failed to make a case is based wholly on surmise and speculation, without the support of substantial evidence.

In the last analysis the Commission's decision rests upon its argument that because North American owned 17.71% of Pacific Gas stock, North American might at some time in the future, as the result of a proxy fight, secure a controlling influence. The evidence shows without contradiction that this could not happen. At most, the Commission's view is mere speculation as to a hypothetical future event, and does not fulfill the requirement of the statute that the controlling influence be presently in existence. If the Commission feels that there is any real possibility that a situation might arise in the future where North American could gain such a controlling influence, it could guard against such a contingency by making a conditional order as contemplated by the Act, a provision which has been ignored by the Commission in this case, and not mentioned by it.

Having in mind that Pacific Gas was proving a negative fact, i.e. that North American did not have a controlling influence at the time of the hearing, an examination of the evidence and a reading of the examiner's findings show that this was amply proved, and that the conclusion of the Commission that it was not proved, is based upon pure speculation and is unsupported by substantial evidence.

The uncontradicted evidence shows:

1. That during the entire 11 years it has been a stockholder, North American has never exercised a controlling influence over Pacific Gas. The Commission itself agrees "with the findings of the Trial Examiner that the record does not

reveal any past attempts by North American to interfere affirmatively with the management or policies of P. G. & E." (R 1920)

2. That the only time North American attempted to influence Pacific Gas action, i.e., when in 1933 it asked the directors to reconsider their action in reducing the dividend, the attempt was wholly unsuccessful.

3. That none of the directors or officers of Pacific Gas (except the two North American nominees) is subject to the controlling influence of North American.

4. That the ownership of 17.71% of Pacific Gas stock does not give North American the power to exercise a controlling influence, and that in a fight for proxies North American could not secure control.

5. That there have never been any business transactions or dealings of any kind between Pacific Gas and North American (except the original 1930 purchase): there is an entire absence of inter-company transactions, and none of the evils which the Act was designed to prevent have existed or do exist with respect to Pacific Gas.

The Commission has held that the "controlling influence" mentioned in the Act must be sufficiently powerful to bring about the evils that the Act is designed to guard against (*Manchester Gas Company*, 7 S.E.C. 57, 62).

> "If the 'controlling influence' is sufficiently extensive to embrace the power to bring about the evils that the Act is designed to guard against,

the statutory standard under Section 2(a)(8) is satisfied."

The evidence shows conclusively that the evils the Act is designed to guard against do not presently exist, and that North American does not possess and cannot possess any controlling influence sufficient to bring them about.

To be subject to the Act, Pacific Gas must as a fact at the time of the hearing be subject to the controlling influence of North American. The Commission finding, on the basis of speculation, that at some future time North American might obtain such a controlling influence, as a result of a proxy fight or otherwise, certainly does not measure up to the requirements of the statute so as to subject Pacific Gas to the obligations, duties and liabilities of the Act; and the attempt of the Commission to bring Pacific Gas under its jurisdiction is wholly unsupported by any evidence of record.

III.

THE COURT BELOW DID NOT GIVE THE REVIEW CONTEMPLATED BY THE ACT

The proceeding in the court below, under Section 24(a) of the Act, to review the Commission's order, is an original judicial proceeding, being the first judicial hearing of the case. See *Commission v. Havemeyer,* 296 U.S. 506, 511, 519; *Chamber of Commerce v.*

Federal Trade Commission (C.C.A. 8th), 13 F.2d 673, 674.

In *Natural Gas Pipeline Co. v. Federal Power Commission* (C.C.A. 7th), 128 F.2d 481, 484, the Court said:

> "We think it well settled that in respect to review of orders of Federal Boards and Commissions, the jurisdiction of the Circuit Court of Appeals when granted by Congress, is original rather than appellate in character and that, being endowed with original jurisdiction, the court may by its own orders protect the rights of the parties in any manner in which any trial court of equity of general jurisdiction might do so in an injunction suit."

It was therefore error for the court to affirm the order of the Commission by an equal division. The effect of such affirmance is to deny the judicial review to which, by the statute, the parties are entitled.

In *Durant v. Essex Company* (1868), 7 Wall. 107, this Court held that affirmance of an appeal by an equally divided court decided nothing, and was equivalent to dismissal of the appeal.

Section 24(a) imposes a positive duty on the Circuit Court of Appeals to determine the questions arising out of a petition to review an order of the Commission. The section provides that upon the filing in the Circuit Court of Appeals of a transcript of the record before the Commission "such court shall have exclusive jurisdiction to affirm, modify or set aside such order in whole or in part". The power of the

Commission itself is lost during the pendency of the proceeding and the court is bound to decide the controversy.

In an original proceeding before a court made up of more than one judge, concurrence in a decision by a majority of the court is essential to any action. If such concurrence cannot be obtained, the matter must remain in *statu quo*, in the absence of some provision such as formerly existed in connection with the Circuit Courts of the United States, when, on a division of opinion, the matter could be certified to a higher court for disposition. For a court of first instance, equally divided on the merits, to attempt to dispose of the matter one way or the other amounts to a decision of the case by less than a majority of the court (21 C.J.S. 296).

In re First Congressional District Election, 295 Pa. 1, 144 Atl. 735, 739, it was held:

> "When a legal or semi-legal tribunal consists of only two members, neither one of them can perform an affirmative act changing or which may change an existing condition; for it takes a majority of the whole body to do this and one is not a majority of two. It is a universal rule that when a judicial or semi-judicial body is equally divided, the subject matter with which it is dealing must remain in statu quo."

See also: *Deglow v. Kruse*, 57 Ohio St. 434, 49 N.E. 477; *In re Kings Co. E. R. Co.* (1879), 78 N.Y. 383, 385.

The rule differs in this respect from the rule on appeal where a judicial decision having once been rendered, it is proper for the appellate court, being equally divided in opinion, to affirm the judgment. However, even in this situation it has been the practice of this Court, where a change in the personnel of the Court is in contemplation, to grant a rehearing, so that the appeal may be disposed of on the merits. In 313 U.S. at 596 and 597 eight rehearings were so granted.

Apart from the constitutional duty of the courts to determine whether an administrative body has acted pursuant to law, specific provision in the statute for judicial review has additional significance. *United States v. Carolina Carriers Corp.*, 315 U.S. 475, 489.

We submit that the performance of the judicial function in such matters requires a judicial determination of the question whether the administrative agency has acted within its powers, and whether a fair hearing has been accorded. This duty, we submit, was not performed by the court's declaring that its members are equally divided over the question whether the action of the administrative body was proper, and that it is therefore unable to determine the issues presented to it.

CONCLUSION

The trial examiner found all the facts entitling Pacific Gas to a declaration that it is not a subsidiary of North American and recommended that such declaration be granted. The Commission acknowledged the correctness of the facts found by the trial examiner but reached a contrary conclusion by interpreting and applying the statute in what we have shown to be an erroneous manner. By reason of its error, the Commission, as we have pointed out, failed to consider and weigh the evidence in accord with its statutory duty, and denied the application because an unwarranted burden of demonstration was not thought by the Commission to have been sustained.

Pacific Gas is, and always has been, managed and controlled by Californians. It has been vigilant to prevent control or domination by holding companies or by any foreign interest. When independent utilities throughout the country were being bought up or otherwise brought under the control of holding companies, and when the evils were being practiced which finally resulted in the passage of the Holding Company Act, Pacific Gas not only preserved its independence but made a notable record of public service. The Commission now seeks to bring under its "protective custody" a utility that has always been able to maintain its independence through its own unaided efforts.

Having established its continuing ability to preserve its independence, Pacific Gas should not now be held to be a subsidiary of a holding company on the basis

of speculation as to what might conceivably happen at some future time under highly improbable circumstances, when such speculation is in conflict with all the evidence as to what has happened or may happen.

The Commission recognized that never in the eleven years that North American had been a stockholder of Pacific Gas had North American exercised a controlling influence over it nor engaged in a single transaction with it. It is now nine years since the enactment of the Act, one of the principal objectives of which is to restrict the control of local utility companies by holding companies and which requires divestment by such holding companies of control, or even interest in local utilities, other than those constituting a single geographical integrated system. The Commission has already promulgated an order requiring North American to dispose of its stock in Pacific Gas.

The Commission in its opinion speaks of "unrealities". Could anything be more unreal than to infer from this record, and in the face of these facts, that North American could by engaging in a proxy fight wrest control of this California company from its California management and directors, when 48% of its voting stock is owned in California, when there is a well established antagonism in the community to foreign domination or management, when holding companies as such, are generally regarded with disfavor, and when the very act of soliciting proxies for the purpose of gaining such control, is subject to the complete control of the Commission, which is charged

by the Act with the duty of restricting holding companies rather than of permitting their influence or control to be further extended?

It is respectfully submitted that the portion of the order which denies the application of Pacific Gas should be set aside.

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San Francisco,
November 11, 1944.

(APPENDIX FOLLOWS)

Appendix

AN ACT

To provide for control and regulation of public-utility holding companies, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Public Utility Act of 1935".

TITLE I—CONTROL OF PUBLIC-UTILITY HOLDING COMPANIES

NECESSITY FOR CONTROL OF HOLDING COMPANIES

SECTION 1. (a) Public-utility holding companies and their subsidiary companies are affected with a national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States; (2) their service, sales, construction, and other contracts and arrangements are often made and performed by means of the mails and instrumentalities of interstate commerce; (3) their subsidiary public-utility companies often sell and transport gas and electric energy by the use of means and instrumentalities of interstate commerce; (4) their practices in respect of and control over subsidiary companies often materially affect the interstate commerce in which those companies engage; (5) their activities extending over many States are not

susceptible of effective control by any State and make difficult, if not impossible, effective State regulation of public-utility companies.

(b) Upon the basis of facts disclosed by the reports of the Federal Trade Commission made pursuant to S. Res. 83 (Seventieth Congress, first session), the reports of the Committee on Interstate and Foreign Commerce, House of Representatives, made pursuant to H. Res. 59 (Seventy-second Congress, first session) and H. J. Res. 572 (Seventy-second Congress, second session) and otherwise disclosed and ascertained, it is hereby declared that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers of electric energy and natural and manufactured gas, are or may be adversely affected—

(1) when such investors cannot obtain the information necessary to appraise the financial position or earning power of the issuers, because of the absence of uniform standard accounts; when such securities are issued without the approval or consent of the States having jurisdiction over subsidiary public-utility companies; when such securities are issued upon the basis of fictitious or unsound asset values having no fair relation to the sums invested in or the earning capacity of the properties and upon the basis of paper profits from intercompany transactions, or in anticipation of excessive revenues from subsidiary public-utility companies; when such securities are issued by a subsidiary public-utility company under cir-

cumstances which subject such company to the burden of supporting an overcapitalized structure and tend to prevent voluntary rate reductions;

(2) when subsidiary public-utility companies are subjected to excessive charges for services, construction work, equipment, and materials, or enter into transactions in which evils result from an absence of arm's-length bargaining or from restraint of free and independent competition; when service, management, construction, and other contracts involve the allocation of charges among subsidiary public-utility companies in different States so as to present problems of regulation which cannot be dealt with effectively by the States;

(3) when control of subsidiary public-utility companies affects the accounting practices and rate, dividend, and other policies of such companies so as to complicate and obstruct State regulation of such companies, or when control of such companies is exerted through disproportionately small investment;

(4) when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties; or

(5) when in any other respect there is lack of economy of management and operation of public-utility companies or lack of efficiency and adequacy of service rendered by such companies, or lack of effective public regulation, or lack of economies in the raising of capital.

(c) When abuses of the character above enumerated become persistent and wide-spread the holding company becomes an agency which, unless regulated, is injurious to investors, consumers, and the general public; and it is hereby declared to be the policy of this title, in accordance with which policy all the provisions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.

DEFINITIONS

SEC. 2. (a) When used in this title, unless the context otherwise requires—

* * * * * * *

(7) "Holding company" means—

(A) any company which directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting securities of a public-utility company or of a company which is a holding company by virtue of this clause or clause (B), unless the Commission,

as hereinafter provided, by order declares such company not to be a holding company; and

(B) any person which the Commission determines, after notice and opportunity for hearing, directly or indirectly to exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon holding companies.

The Commission, upon application, shall by order declare that a company is not a holding company under clause (A) if the Commission finds that the applicant (i) does not, either alone or pursuant to an arrangement or understanding with one or more other persons, directly or indirectly control a public-utility or holding company either through one or more intermediary persons or by any means or device whatsoever, (ii) is not an intermediary company through which such control is exercised, and (iii) does not, directly or indirectly, exercise (either alone or pursuant to an arrangement or understanding with one or more other persons) such a controlling influence over the management or policies of any public-utility or holding company as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be sub-

ject to the obligations, duties, and liabilities imposed in this title upon holding companies. The filing of an application hereunder in good faith by a company other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a holding company, until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of any order granting such application and as a part of any such order, the Commission may require the applicant to apply periodically for a renewal of such order and to do or refrain from doing such acts or things, in respect of exercise of voting rights, control over proxies, designation of officers and directors, existence of interlocking officers, directors and other relationships, and submission of periodic or special reports regarding affiliations or intercorporate relationships of the applicant, as the Commission may find necessary or appropriate to ensure that in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application of the company affected, shall revoke the order declaring such company not to be a holding company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such com-

pany, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order.

(8) "Subsidiary company" of a specified holding company means—

(A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and

(B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a

specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic

or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

* * * * * * *

POWER TO MAKE PARTICULAR EXEMPTIONS REGARDING HOLDING COMPANIES, SUBSIDIARY COMPANIES, AND AFFILIATES

SEC. 3. (a) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any holding company, and every subsidiary company thereof as such, from any provi-

sion or provisions of this title, unless and except insofar as it finds the exemption detrimental to the public interest or the interest of investors or consumers, if—

(1) such holding company, and every subsidiary company thereof which is a public-utility company from which such holding company derives, directly or indirectly, any material part of its income, are predominantly intrastate in character and carry on their business substantially in a single State in which such holding company and every such subsidiary company thereof are organized;

(2) such holding company is predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and States contiguous thereto;

(3) such holding company is only incidentally a holding company, being primarily engaged or interested in one or more businesses other than the business of a public-utility company and (A) not deriving, directly or indirectly, any material part of its income from any one or more subsidiary companies, the principal business of which is that of a public-utility company, or (B) deriving a material part of its income from any one or more such subsidiary companies, if substantially all the outstanding securities of such companies are owned, directly or indirectly, by such holding company;

(4) such holding company is temporarily a holding company solely by reason of the acquisition of securities for purposes of liquidation or

distribution in connection with a bona fide debt previously contracted or in connection with a bona fide arrangement for the underwriting or distribution of securities; or

(5) such holding company is not, and derives no material part of its income, directly or indirectly, from any one or more subsidiary companies which are, a company or companies the principal business of which within the United States is that of a public-utility company.

(b) The Commission, by rules and regulations upon its own motion, or by order upon application, shall exempt any subsidiary company, as such, of a holding company from any provision or provisions of this title, the application of which to such subsidiary company the Commission finds is not necessary in the public interest or for the protection of investors, if such subsidiary company derives no material part of its income, directly or indirectly, from sources within the United States, and neither it nor any of its subsidiary companies is a public-utility company operating in the United States.

(c) Within a reasonable time after the receipt of an application for exemption under subsection (a) or (b), the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of such application. The filing of an application in good faith under subsection (a) by a person other than a registered holding company shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant

as a holding company until the Commission has acted upon such application. The filing of an application in good faith under subsection (b) shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company until the Commission has acted upon such application. Whenever the Commission, on its own motion, or upon application by the holding company or any subsidiary company thereof exempted by any order issued under subsection (a), or by the subsidiary company exempted by any order issued under subsection (b), finds that the circumstances which gave rise to the issuance of such order no longer exist, the Commission shall by order revoke such order.

(d) The Commission may, by rules and regulations, conditionally or unconditionally exempt any specified class or classes of persons from the obligations, duties, or liabilities imposed upon such persons as subsidiary companies or affiliates under any provision or provisions of this title, and may provide within the extent of any such exemption that such specified class or classes or persons shall not be deemed subsidiary companies or affiliates within the meaning of any such provision or provisions, if and to the extent that it deems the exemption necessary or appropriate in the public interest or for the protection of investors or consumers and not contrary to the purposes of this title.

* * * * * * *

COURT REVIEW OF ORDERS

SEC. 24 (a) Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding be-

fore the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

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SEC. 33. This title may be cited as the "Public Utility Holding Company Act of 1935."

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No. 55

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

PACIFIC GAS & ELECTRIC COMPANY,
Petitioner,

vs.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PACIFIC GAS AND ELECTRIC COMPANY

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I

The Commission expressly grounds its decision on a construction of the Act which is erroneous.

The first argument in the Commission's brief is entitled "There is no substantial dispute between the parties as to statutory construction" (Comm. Br., p. 32).

This is followed by an assertion (p. 43) that there are no questions of law involved, but a question of fact only; and that the Commission decision can be upset only if this Court decides "that the evidence so strongly demanded an affirmative finding of lack of controlling influence as to exclude any 'rational basis' for the Commission's refusal to make such an affirmative finding. Unless the Court can

so decide, the Commission's determination must stand • • • but in any event the question is one of fact, not of law."

This is a complete misconception of petitioner's position, and is directly contrary to the Commission's own view of the issue between it and the examiner who recommended that the application be granted.

The Commission characterized the issue, not as one of fact but, on the contrary,

> "The point of issue • • • is rather one of statutory interpretation and in this respect we cannot agree with the conclusions reached by the trial examiner" (R. VI, 1912).

It then pointed out its view of the law that

> "the application herein cannot be granted unless we can find that applicant has sustained the burden of demonstrating that its management and policies are not subject to the controlling influence of North American" (R. VI, 1912).

and

> "'subject to a controlling influence' includes susceptibility to domination" (R. VI, 1913);

and concluded by its ultimate summing up:

> "The only question which we have decided is that, in the circumstance of this case where the statute presumptively requires that PG&E be regulated as a subsidiary of North American, the facts in the record before us do not demonstrate that PG&E is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company" (R. VI, 1931).

We believed the issues of law to be clear from the Commission's opinion, and our brief, but as counsel appears uncertain, we summarize them as follows:

1. The Commission misapprehended the statutory test of a subsidiary. It considered any utility, 10 percent or more of whose voting stock is owned by a holding company, to be a subsidiary, whereas the statute, properly construed, requires that for such a utility to be a subsidiary it must be "subject to the controlling influence" of a holding company.

2. The Commission erroneously held that 10 percent-owned, but non-controlled, utilities are merely an "exception" to the statutory design to regulate all such utilities. Counsel refers to an applicant, as one applying "for an exception under the statute", and states that "petitioner had not established its right to relief" (Comm. Brief pp. 27, 76).

3. The Commission imposed the impossible burden of "demonstrating" a negative.

4. The Commission held that an existing controlling influence was proved by the mere future possibility of such influence; that "susceptibility to domination" was the same as "subject to a controlling influence."

5. It held that a "substantial influence" was a "controlling influence."

6. It held that an influence sufficient (with the help which could be obtained from other stockholders) to compel good management was a "controlling influence", sufficient to meet the statutory requirement that the controlling influence be sufficient to effect the evils which the Act was designed to prevent, i. e., transactions between the utility and the holding company not at arms length, etc.

Singly, and in the aggregate, these errors constitute a failure of the Commission to follow its statutory authority. It is no answer to argue that had the Commission correctly

pursued the statute, it could have come to the same conclusion, for that would be to substitute the Court's view for that of the Commission; and Congress entrusted this power to the Commission and not to the Court. That the Commission would have reached the same conclusion if it had properly applied the law, is mere speculation. *Securities and Exchange Comm.* v. *Chenery Corporation*, 318 U. S. 80, 93.

There could be no clearer case than this for the application of the rule of statutory construction (applicable also to review of administrative action), which is declared in a long line of cases, and summarized in the following from *Florida* v. *United States*, 282 U. S. 194, 211.

> "The question in the present cases, then, is not one of authority, but of its appropriate exercise. The propriety of the exertion of the authority must be tested by its relation to the purpose of the grant and with suitable regard to the principle that whenever the federal power is exerted within what would otherwise be the domain of state power, the justification of the exercise of the federal power must clearly appear."

See also *Ill. Cent. R. R.* v. *Public Utilities Comm.*, 245 U. S. 493; *United States* v. *Baltimore & Ohio R. R.*, 293 U. S. 454, 464.

In *United States* v. *Carolina Carriers Corp.*, 315 U. S. 475, 489, this Court said:

> "Congress has made a grant of rights to carriers such as appellee. Congress has prescribed statutory standards pursuant to which those rights are to be determined. Neither the Court nor the Commission is warranted in departing from those standards because of any doubts which may exist as to the wisdom of following the course which Congress has chosen. Congress has also provided for judicial review as an additional assurance that its policies be executed. That

> review certainly entails an inquiry as to whether the Commission has employed those statutory standards. If that inquiry is halted at the threshold by reason of the fact that it is impossible to say whether or not those standards have been applied, then that review has indeed become a perfunctory process. If, as seems likely here, an erroneous statutory construction lies hidden in vague findings, then statutory rights will be whittled away. An insistence upon the findings which Congress has made basic and essential to the Commission's action is no intrusion into the administrative domain. It is no more and no less than an insistence upon the observance of those standards which Congress has made 'prerequisite to the operation of its statutory command.' *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 144. Hence that requirement is not a mere formal one. Only when the statutory standards have been applied can the question be reached as to whether the findings are supported by evidence."

Pacific Gas is a California utility whose properties and business have always been exclusively confined within that State. Clearly Congress did not intend that such a local utility should be subjected to Federal control, unless in fact part of a holding company because "subject to its controlling influence". The statute shows as strong a desire to exclude non-controlled local utilities from the Act, as to include "controlled" utilities. The Commission was authorized and directed to draw the line between Federal and State jurisdiction pursuant to the clearly expressed Congressional mandate. Here it drew the line to include Pacific Gas; but its conclusion is clearly based on a misinterpretation of the Act.

Counsel urges that the Commission's expressions are not to be taken to mean what they say: that "demonstrate", repeatedly used, means only "prove"; that "substantial influence" was intended to mean "controlling influence",

and so on. Here, as elsewhere in marking the line between State and Federal powers,

> "Proper regard for the rightful concern of local interests * * * makes desirable the requirement that federal power be exercised only where the statutory authority affirmatively appears. The sacrifice of these legitimate local interests may be as readily achieved through the Commission's oversight or neglect * * * as by improper findings. The insistence that the Commission make these jurisdictional findings before it undertakes to act not only gives added assurance that the local interests for which Congress expressed its solicitude will be safeguarded. It also gives to the reviewing courts the assistance of an expert judgment on a knotty phase of a technical subject." (*Yonkers* v. *United States*, 320 U. S. 685, 690). And see *S. E. C.* v. *Chenery Corp.*, 318 U. S. 80, 93-95.

Here, the concern of the State of California over this attempted extension of Federal Power into what has heretofore been its exclusive domain, is demonstrated by the appearance of the California Railroad Commission in the proceeding, its showing of its complete jurisdiction over Pacific Gas, and its statement that it is aware of no instance when the management or policies of Pacific Gas have been either controlled or influenced by North American; and it perceives no public interest which compels the conclusion that Pacific Gas should be declared subject to the Act. (R. VI, 1871-6.)

Counsel asserts that "The courts have uniformly sustained the Commission's understanding of the law." (Comm. Br. p. 37.) We respectfully submit that the Commission's interpretations of the law as here made and challenged by us have not been passed upon by the courts. In the Detroit Edison, Public Service of New Jersey, Hartford, Koppers and American Gas cases, the facts over-

whelmingly showed the existence of a present controlling influence, and intercompany transactions. In at least three of the cases, actual exercise of a controlling influence in the past were admitted facts. None of these courts approved the Commission's view that "susceptibility to domination" is "controlling influence", or that a "substantial influence" is a "controlling influence." They all held, as urged by the Commission, that a "controlling influence" need not be presently exercised, if it presently exists, in order to bring a local utility within the Act, but we have never contended the contrary, and the point is not involved here.

II

The Commission fails in its attempt to show substantial evidence for its conclusion.

The second part of the Commission brief is devoted to the contention that its conclusion is supported by substantial evidence.

In the course of that argument the statement is made that "petitioner has not disputed any of the Commission's findings set forth in the statement above at pp. 8-24" (Comm. Br. p. 47). That statement begins, "The facts, as detailed in the findings and opinion of the Commission • • • may be summarized as follows" (Comm. Br. p. 8).

We are at a loss to explain counsel's statement because a substantial part of our brief is devoted to proving that the Commission's statement of the facts is incomplete and inaccurate, and "that some of the statements made in the Commission's opinion must be characterized as lacking in candor" (Pet. Br. pp. 59-93). This is also the view of Judge Garrecht and Judge Matthews, who said,

> "We call attention to the fact that the findings and conclusions of the Commission are based on inference and surmise in many instances in absolute conflict

with the testimony which was uncontradicted and not discredited". (R.V., 1747; see also pp. 1758, 1761, 1771, and 1775.)

Counsel's entire argument is founded upon the Commission's statement of the evidence, which, as shown in our brief, is neither a full nor a fair statement of the evidence as it appears in the record. Time and space do not permit a detailed comparison of the record with the statement of facts in counsel's brief, but we point out some typical instances where the statements are not supported by the record. Important evidentiary facts not mentioned at all are so extensive that it is impossible to deal with them here, but reference is made to the examiner's findings (R. VI, 1780), which fully states the evidentiary facts, as to which counsel concedes there is no dispute (Comm. Br. p. 8, note 6).

1. Counsel repeatedly refers to the fact that "Since 1932 • • • at no meeting were enough shares present, apart from the shares held by North American, to constitute a quorum" (Comm. Br. p. 22), and in a footnote on page 23 sets forth what is stated to be a table from the Commission's opinion showing the representation at stockholders meetings. But in reproducing the table, the year 1931 which appears in the table in the Commission's opinion (R. VI, 1899) has been omitted entirely. The omitted material shows that in that year there were present, at two separate meetings, stockholders other than North American representing 50.2 percent, and 57.7 percent respectively (R. VI, 1899). Later in the brief counsel goes even further, dropping out the qualifying words "Since 1932", and says (p. 66), "Since the inception of the arrangement P. G. & E. could have conducted no business at any of its stockholders meetings without the approval and votes of North American". Since the "arrangement" was made

in 1930, counsel has thus overlooked the two meetings in 1931, as to which his statement is inaccurate.

Counsel, as well as the Commission, has wholly failed to mention or give effect to the testimony and the finding of the examiner that "an attendance of 75 percent or more of the stockholders could have been and can be obtained for any stockholders meeting by sending out a second notice" (R. VI, 1843), thus showing that attendance by North American is not necessary to obtain a majority representation at stockholders meetings. As a large part of the argument is based on the alleged inability of Pacific Gas to hold stockholders meetings without North American attendance, the fact that it has had two such meetings since North American became a stockholder, and that it can obtain a quorum without North American attendance, are important, and failure to mention them is an unfortunate oversight. Since lack of a quorum would continue the incumbent directors in office, with power to fill vacancies, it is difficult to see what probative force the point has in any event.

2. Counsel states, quoting the Commission opinion, "none of P. G. & E.'s other large stockholders is represented on its Board" (Comm. Br. p. 17). The stock interests of the directors are summarized on pages 1805-6 of R. VI, showing that (eliminating the two North American directors) all of the directors (excepting Foote, the Secretary) are substantial stockholders, and that six each have stock interests exceeding 90,000 shares,—stock interests being shares owned personally, or by family and affiliated interests. 90,000 shares have a value of approximately $2,500,000. The only foundation for the Commission's statement would seem to be the directors' testimony that they considered they represented all stockholders and not any particular stockholder.

3. Counsel details, as does the Commission's opinion, that Pacific Gas sends to North American a variety of detailed weekly and monthly reports (Comm. Br., p. 18); and states that "North American has never requested any information from P. G. & E. which has not been furnished" (p. 19). This implies that much information is requested, and that North American receives detailed reports not available to others. The evidence shows that the reports are sent to Fogarty and Freeman as directors, that they consist principally of reports submitted to meetings of the directors and executive committee, and are sent to them after they have been submitted at such meetings (R. I, 425, 434, R. II, 497). They convey less information than is received by those who attend the meetings (R. VI, 1835). The other reports are formal reports having wide circulation, such as reports to the Edison Electric Institute, and to the insurance companies, sent to 400 companies (R. II, 748-50). Copies of rate schedules were not sent until after they had been filed and approved by the Railroad Commission (R. II, 749).

4. Counsel states "The record shows only one occasion, prior to the time when Black became president, when North American's wishes on a particular matter were contrary to the action of P. G. & E.'s directors" (Comm. Br. p. 20). This repeats a statement from the commission's opinion (R. 1911). It implies that on various occasions North American's "wishes" were communicated and complied with. The record shows that North American never expressed or communicated a wish or request to Pacific Gas regarding to affairs at any time either before or since Mr. Black became president, except in 1933, when the directors reduced the dividend, and North American requested that the action be reconsidered, but it never was. Elaborate argument is made to overcome the probative effect of this fact as show-

ing lack of influence. Counsel says, "The request was mild in terms, and when it was refused North American did not regard the matter as of sufficient importance to call for any further attempt to obtain reconsideration" (Comm. Br. 59). The action reduced by one fourth North American's income from Pacific Gas, and the attempt to depreciate its importance is hardly consistent with Counsel's previous statement (p. 9) that the holding was important to North American because "The dividends from it have constituted between 20% and 25% of North American's corporate gross income." Nor is it consistent with the fact that North American made strenuous efforts to secure reconsideration of the reduction (R. III, 1068; R. IV, 1625). It is significant also, that North American only learned of the dividend reduction after it had had been made (R. III, 1068).

5. Counsel refers (p. 20) to a "practice of asking North American's advice in connection with proposed financing." Again he says (p. 57), "Ever since Black became petitioner's president he has called Fogarty, Chairman of North American's executive and finance committees, a number of times each year to seek advice concerning petitioner's financial affairs"; and quotes from a court decision to the effect that "Under some circumstances 'controlling influence may spring as readily from advice constantly sought as from command arbitrarily imposed.'" And again, (p. 66) counsel says that "The advice of North American representatives has been frequently sought, at least on financial matters." The implication of this is that Mr. Black was constantly seeking advice from North American. This is contrary to the evidence. Mr. Black never sought advice from North American (R. III, pp. 1081, 1152). In 1938 Mr. Black asked Mr. Fogarty how much he thought the discount should be in a private sale of bonds to an insurance company, to interest them (R. III, 1191). He called

Mr. Fogarty occasionally when Pacific Gas was selling bonds "to get their advice on what the market might be doing" and "get their ideas on prices of bonds, what the market might stand, as we got closer to the dates of our offerings. That is the kind of information, of course, that I was getting from all directors and from any source which I could get. Q. That was information rather than advice, was it not? A. Yes." (R. III, 1081.) Under examination by Commission counsel, he testified, "Q. Would it be fair to say that North American is not consulted with reference to financing projects of the Applicant until they have reached a fairly definite stage? A. It would be accurate to say that they are not consulted in the formulating of any of our financial plans" (R. III, 1291. See also R. VI, 1863-8). The Commission searched the telephone company records and found the following to be the total of calls between Pacific Gas and North American.

	From Pacific Gas	From North American
1937	2	2
1938	6	3
1939	3	2

This is to be contrasted with the private wire which North American maintained with its subsidiaries (R. III, 1227).

6. Counsel, on page 53, comments on Pacific Gas financing, seeming to imply that there was something improper in selecting Blyth & Co., a San Francisco house, to head the company's financing. Indeed testimony covering hundreds of pages was introduced by the Commission on the question of financing, and it devotes two pages of its opinion to discussion of the subject. The fact is, however, as shown in the record without any dispute or qualification,

that North American has never participated in any way in Pacific Gas financing or been asked its advice respecting the membership groups, that Pacific Gas has always handled its own financial arrangements by negotiations in San Francisco, and has selected a San Francisco firm to head its underwriting syndicates in recent years, with a heavy participation by other California firms, because it felt it to be in the best interest of the company to have local underwriters to the fullest extent possible (R. III, 1093).

North American has never been consulted in the formulation of any of Pacific Gas financial plans (R. III, 1291; R. VI, 1863-8).

Why so much attention should be devoted to financing is not apparent; but it is clear that after all the testimony and all the comment, the fact is unassailable, that North American has never had the slightest thing to do with Pacific Gas financing.

The most the Commission found was "substantial influence"—not "controlling influence".

In the Commission's brief, pages 47 to 73, is a summation of evidence claimed to be substantial support for the action of the Commission. As pointed out, and as a comparison with the findings of the examiner and an examination of the record will show, it is not a statement even in substance of all the evidence, and in several important particulars is contrary to the evidence. It is reasonable to conclude that the Commission's decision is based on the evidence recited in its opinion. If so, then its action was arbitrary, since facts and circumstances which ought to have been considered were excluded from consideration. *St. Joseph's Stock Yards Co.* v. *United States,* 298 U. S. 38, 74; *Fed. Trade Com.* v. *Curtis Publishing Co.,* 260 U. S. 568, 580.

But considering the various factors which the Commission recites, and ascribing to them the full effect which it, in its expert judgment, deemed proper, there is no escape from the conclusion that their total cumulative effect, in the opinion of the Commission, was only this:

> "• • • that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner." (R. VI, 1922.)

This falls far short of a finding that Pacific Gas is "subject to the controlling influence" of North American. Yet counsel asserts that this finding is sufficient to support its ultimate conclusion that Pacific Gas failed to establish the absence of an existing "controlling influence" (Comm. Br. p. 42). This conclusion, couched in the language of the statute, is not a finding of fact at all, (*United States* v. *Chi., M., St. P. and P. R. Co.*, 294 U. S. 499, 506), which leaves the ultimate factual finding of the Commission, comprehending in its expert judgment the entire effect of all the evidence, that North America has the power to make its influence felt in "a substantial and affirmative manner". That is all the Commission could find, and we submit it is fair from this to conclude that the Commission itself did not believe the record would sustain a finding of the existence of a "controlling influence."

The Commission's brief (p. 42) admits the patent fact that the Commission did not find that a controlling influence exists, and that the finding of power to "make its influence felt in a substantial and affirmative manner" is only a finding of some degree of influence less than controlling.

The Commission's reasoning therefore comes to this: that although an exhaustive scrutiny of the record did not result in a finding that controlling influence was present, it did supply a sufficient basis for a finding that North American could, if occasion arose, "make its influence felt

in a substantial and affirmative manner" (R. VI, 1922). The Commission believed this a sufficient basis for its conclusion that the applicant had failed to show the absence of a "controlling influence" notwithstanding the otherwise uncontradicted and comprehensive evidence to that effect because under its construction of the Act, North American's stock ownership creates a situation in which

> "the statute presumptively requires that P. G. & E. be regulated as a subsidiary of North American";

and since the facts in the record

> "do not demonstrate that P. G. & E. is entitled to be excepted from the general requirement of regulation as a subsidiary of a registered holding company" (R. Vol. VI, 1931),

the Commission has authority to refuse to declare that Pacific Gas is not a subsidiary of North American.

In short, the Commission's decision rests on the grounds stated by it; namely, that since lack of controlling influence is merely a statutory exception to the Act's purpose of regulating all local public utilities of whose stock 10 percent or more is owned by a holding company, the right to escape from the Act under the exception requires a degree of proof sufficient to "demonstrate" that the case is within the exception.

But this construction of the Act is shown in our brief (p. 26 et. seq.) to be contrary both of the language of the Act and its entire history; it follows that the Commission's decision based thereon should not stand.

The possibility of North American's intervening to correct Pacific Gas mismanagement is no evidence of a present controlling influence, as the Commission contends.

It is fair to say that the aggregate effect of all of the various circumstances marshalled by the Commission and

its counsel, is, as the Commission states, (R. VI, p. 1920-4), that if at some future time Pacific Gas were mismanaged, North American could secure enough support from other stockholders to correct the situation and insure good management. But any stockholder has the same opportunity. Any substantial Californian would have far greater chance of accomplishing this than North American, a New York holding company, under death sentence imposed under a statute deemed necessary in the public interest because of evils inherent in the holding company device. Whether North American could do even this is the merest speculation; it surely is not evidence of a present controlling influence.

But even if it were a fact that at some future time North American could gain support of other stockholders to correct mismanagement of Pacific Gas, that is not a power which the Act considers a "controlling influence". The Commission itself has stated that the quantum of power essential to constitute a controlling influence is influence sufficiently extensive "to embrace the power to bring about the evils which the Act is designed to guard against". (Manchester Gas Co., 7 S. E. C. 57, 62). Power to join with others to correct mismanagement is not power to impose conduct which would "bring about" the evils defined in the Act (Sec. 1(b)), such as those arising out of transactions between holding companies and subsidiaries not at arms length, the issue of watered securities and similar evils, all of which amount to bad management and the milking of local utilities for the benefit of a holding company.

Surely the ability of North American as a stockholder, to join with others to protect its investment against mismanagement, is not the "controlling influence" mentioned in the Act; and yet that is the maximum power that counsel and the Commission suggest.

The spectacle of a holding company under sentence of death, and whose right to solicit proxies is subject to the jurisdiction of the Commission, engaging in proxy solicitation for the purpose of gaining a "controlling influence" to compel Pacific Gas, against its will, to engage in evil practices condemned by the Act—and being successful—is beyond the realm of fancy, let along rational inference.

Conclusion

Counsel for respondent points out that North American has committed itself to a program of systematic disposition of its Pacific Gas stock which if adhered to will reduce its holdings below 10 percent by January, 1946. Also that North American is under Commission order to dispose of its stock in Pacific Gas and has claimed no error in that determination, save a constitutional objection. Also that Pacific Gas has never complied with the requirements of the Act because the Commission order has been stayed pending the outcome of this case (Comm. Br., note, p. 8); and "Thus, the decision of this case, if favorable to the Commission, will subject the petitioner to the responsibilities and restrictions of a subsidiary for only a relatively short period"[1] (Comm. Br., note, p. 26). It concludes:

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[1] This statement of commission counsel is a startling acknowledgment that the sole ground for denying the Pacific Gas application was the stockholding of North American in excess of 10%, for counsel assents that as soon as the holding falls below 10% Pacific Gas will no longer be subject to the Act. This is a patent admission that there is no basis in the evidence for the Commission's decision except the stockholding in excess of the statutory 10%, and that Pacific Gas is a subsidiary solely because of the definition in the Act.

> "the one important consequence of subjecting petitioner to the obligations of a subsidiary company would be to render its future [security] issues subject to the requirement of competitive bidding" (Comm. Br., p. 72).

The purpose of these statements is not clear. If meant to suggest that Pacific Gas will not be greatly injured by being subjected to the Act—even though unjustly—the inference is unfounded.

The powers of the Commission over subsidiaries extend far beyond that of requiring public bidding on security issues. They include the requirement of Commission approval for the issue of all securities, the alteration of preferences or voting rights of outstanding securities, the acquisition of any securities or interest in any business; they prohibit the payment of dividends or the acquisition, retirement or redemption of its securities except under Commission rules, and include a number of other powers including extensive visitorial powers. The Act itself characterizes these as the "obligations, duties and liabilities imposed by the Act".

But all this would not be the only effect on Pacific Gas if it should be made subject to the Act. Of far greater importance to it is the fact that it has always, with justice and pride, been considered by the California public, and by its stockholders and consumers, as an independent self-sufficient California company, managed and operated by Californians, for the service of Californians.

Largely due to the high regard in which it has been held by its consumers and the residents of its territory, it has sold, commencing in 1914, directly to purchasers, largely through its employees, more than $76,000,000 of preferred stock in 68,668 individual sales, at a cost of less than 64 cents per $100 par value, and more than $65,000,000 of common

stock—a predominent proportion of both to residents of its territory, with resultant improvement in public and consumer relationships (R. VI, 1801). Pacific Gas was the originator of customer ownership in the public utility field (R. II, p. 754-65).

To have the Commission and this Court find that Pacific Gas is now, and ever since 1930 has been, under the "controlling influence" of a New York holding company, and that it is necessary that it be taken into the custody of the Commission because "necessary or appropriate in the public interest or for the protection of investors or consumers", would be not only unjust, but would constitute a serious blow to the standing, prestige, and public relations of this California company.

Respectfully submitted,

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Washington, D. C.,
December 1, 1944.

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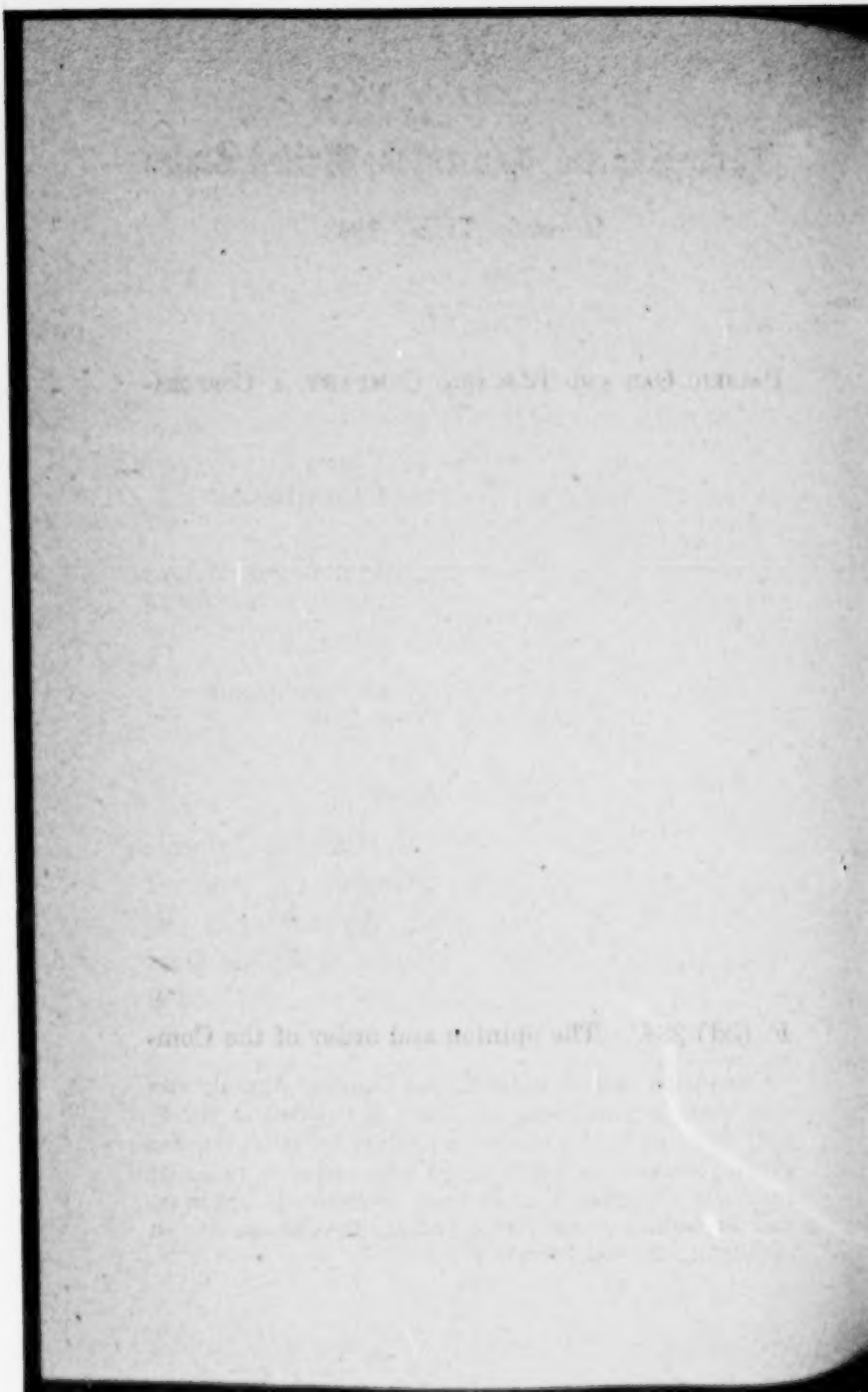

In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 873

PACIFIC GAS AND ELECTRIC COMPANY, A CORPORATION, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

OPINIONS BELOW

The decision of the Circuit Court of Appeals (six judges participating) affirming the order of the Commission by an equally divided court (R. 1741), and the dissenting opinion of Judges Garrecht and Matthews (R. 1741), are reported in 139 F. (2d) 298.[1] The opinion and order of the Com-

[1] An earlier opinion in the Circuit Court of Appeals with only three judges sitting (R. 1699) is reported in 127 F. (2d) 378. After this opinion a petition for rehearing was granted and the case was reargued before all seven judges of the Ninth Circuit sitting *en banc*. Between the argument and the decision Judge Haney died and the affirmance by an equally divided court resulted.

mission (R. 1883), dated September 10, 1941, is not yet reported.

JURISDICTION

The decree of the Circuit Court of Appeals was entered on November 18, 1943 (R. 1776). A petition for rehearing was denied February 23, 1944. (R. 1777.) The petition for a writ of certiorari was filed on April 10, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, made applicable by Section 24 (a) of the Public Utility Holding Company Act of 1935.

QUESTIONS PRESENTED

1. Whether the determination of the Securities and Exchange Commission that petitioner had not shown that its management or policies were not "subject to a controlling influence" by The North American Company within the meaning of the exemption provision of Section 2 (a) (8) of the Public Utility Holding Company Act was unsupported by substantial evidence or without a reasonable basis in law.

2. Whether, as applied to a self-operative order denying an application under Section 2 (a) (8) of the Public Utility Holding Company Act of 1935, the court below, being equally divided, was warranted in entering a decree leaving in effect the order of the Commission.

STATUTE INVOLVED

Section 2 (a) (8) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 807, 15 U. S. C. 79b (a) (8)) is set forth in the Appendix, *infra*, pp. 28–30.

STATEMENT

The petitioner, Pacific Gas and Electric Company ("P. G. & E."), an exempt holding company,[1] is predominantly an electric and gas utility company (R. 45–100). As of the date of its application for an order declaring it was not a subsidiary of The North American Company ("North American"), the latter company owned 32.89% of P. G. E.'s common stock, constituting 17.71% of P. G. & E.'s outstanding voting securities[2] (R. 75).

Since more than 10% of P. G. & E.'s outstanding voting securities are owned by North Ameri-

[1] Concurrently with the filing of its application for an order declaring it was not a subsidiary of The North American Company, petitioner filed an application pursuant to Section 3 (a) (1) and (2) of the Act for an exemption as a holding company with respect to its ownership of 45.8% of the voting securities of Vallejo Electric Light and Power Company, an electric utility company operating in Vallejo, California. This application was granted.

[2] Since the date of the Commission's order, North American has distributed some of petitioner's common stock as dividends; as of the present time, it owns approximately 14.21% of petitioner's voting securities. North American has committed itself to a program of systematic disposition of its P. G. & E. stock. It is also under order to dispose of that stock and it urged no error in that determination except the general constitutional question now pending on a special calendar in this Court.

can, it is a "subsidiary company" of North American under Section 2 (a) (8) (A) of the Act, unless, under the second paragraph of that Section, the Commission should enter an order declaring it not such a subsidiary. P. G. & E. filed an application under that paragraph requesting the Commission to declare that it was not a subsidiary of North American. (R. 2, 45.) The application was denied by the Commission on the ground that P. G. & E. had not sustained the burden of proving that its management or policies "are not subject to a controlling influence" by North American within the meaning of clause (iii) of that paragraph. The findings and opinion of the Commission may be summarized as follows:

P. G. & E., a California corporation organized in 1905, is primarily engaged in the production, purchase, transmission, distribution and sale of electric energy and natural and manufactured gas in northern and central California. As of June 30, 1940, it had assets per books of $791,146,218 (Pet. Ex. 36). For the year ended December 31, 1939, it had gross operating revenues of $107,175,353 (R. 94). As of August 1, 1940, it had the following securities outstanding (R. 74):

First and Refunding Mortgage Bonds	$277,681,000
Assumed bonds issued by San Joaquin Light and Power Company	9,082,000
6% Cumulative preferred stock—4,197,659 shares of a par value of $25 each	104,941,475
5½% Cumulative preferred stock—1,173,163 shares of a par value of $25 each	29,329,075
Common stock—6,261,273 shares of a par value of $25 each	156,531,825
Total	577,515,375

As of the last mentioned date, North American owned 2,059,670 shares of the common stock which ownership represented 32.89% of that class of security and 17.71% of the outstanding voting securities (R. 75). The next largest stockholder, Standard Gas and Electric Company, owned, as of the same date, 200,420 shares of the common stock or 1.72% of the voting securities (R. 75). Generally speaking, the remainder of P. G. & E.'s voting securities are widely scattered among its 96,091 stockholders (Pet. Ex. 20 and 29).

North American's interest in P. G. & E. dates back to 1930. In June of that year, P. G. & E. exchanged 1,825,000 shares of its common stock for certain securities of three public-utility subsidiaries of Western Power Corporation, a sub-holding company in the North American system, and the cancellation of certain indebtedness owed by these subsidiaries to their parent. (Pet. Ex. No. 6; R. 1051–1053.) In 1931 Western Power Corporation purchased 252,055 additional shares of P. G. & E.'s common stock. Upon the dissolution of Western Power Corporation, its holdings of the common stock of P. G. & E. were acquired by North American (Comm. Ex. 56, 57 and 58).

At the time of the 1930 transaction, there was an oral agreement that North American would be entitled to name three directors on P. G. & E.'s board of fifteen and one member of its executive committee (composed of four directors and the President of the company) (R. 1059–1062, 1123).

According to several of the local directors, there was a general understanding between the persons representing P. G. & E. and North American that North American would not interfere with the management of P. G. & E. (R. 225–226, 456–457, 602–605, 675, 688, 881, 947–948, 960–961).

Pursuant to this oral agreement, James B. Black, then a vice-president of North American, Guy C. Earl, a former president of Great Western Power Company of California, and Edwin Gruhl, then vice-president and general manager of North American, were elected to P. G. & E.'s board on June 18, 1930. Black was also appointed to the executive committee but was replaced in a few weeks by Earl. (Pet. Ex. 16 and 17.)

Earl served continuously as a director and member of the executive committee until his death in June 1935. During this period he attended substantially all of the meetings of these two bodies, and took copious notes of what transpired, which he sent to Black together with copies of the minutes of the meetings of the executive committee and various reports which were furnished directors and executive committee members. (Pet. Ex. 19, R. 276, 1154–1155.) For these services, North American paid Earl $12,000 a year (R. 1440). During this period one of Black's principal duties as an employee of North American was the maintenance of careful scrutiny over the affairs of P. G. & E. (R. 1157–1158).

Upon the death of A. P. Rockefeller, P. G. & E.'s president, in November 1933, the executive committee, which then consisted of three San Francisco business men, decided to recommend to the board of directors Black's election as president (R. 611–612, 633–635). After several conferences with local non-employee directors, C. O. G. Miller, one of the executive committee members, called Fogarty of North American and obtained permission to offer the position to Black (R. 613–615, 633). Miller then called Black, who agreed to accept the presidency if elected (R. 634–635). At the insistence of another director, Miller called Black a second time and asked him whether, if elected president, Black would sever all his relations with North American. Black replied in the affirmative. Shortly thereafter, Black was elected to the presidency. (R. 611–616, 633–635, 738–742, 1442–1445.) After Earl's death and Black's selection as president, North American did not appoint a representative to the board or to the executive committee in Earl's place. The other two representatives have attended practically no meetings and no one was ever selected to perform the duties performed by Earl. (R. 1155, 1473; Pet. Ex. 16 and 18.) North American's present representatives on P. G. & E.'s board are J. F. Fogarty, Chairman of the executive and finance committees of North American, and H. C. Free-

man, Vice-president of North American (R. 1901; Pet. Ex. 16).

None of P. G. & E.'s other large stockholders is represented on its board.*

For many years, P. G. & E.'s proxy committee has consisted of its president, vice-president and general manager, and secretary and treasurer. (R. 1088–1089). The proxy committee has customarily solicited proxies for the incumbent directors including North American's representatives. North American has always sent its proxy to the proxy committee. (R. 1581–1582.)

Under the corporation laws of California, the presence in person or by proxy of the holders of the majority of the shares entitled to vote constitutes a quorum and if a quorum is not present a majority of the shares in attendance may adjourn the meeting but no other business may be transacted (R. 1898). Since 1932 (until April 9, 1940) at no meeting were enough shares present, apart from the shares held by North American to constitute a quorum (R. 1898–1899). North American's holdings have represented from 28 to 30 per cent of the total votes cast at each

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* The Commission noted the possibility that C. O. G. Miller, chairman of the board of Pacific Lighting Corporation, which owns 131,900 shares of P. G. & E.'s common stock, might be considered a representative of that company, but indicated that he was not generally so regarded (R. 1901).

of the stockholders' meetings held during the period (Pet. Ex. 23).

In addition to reports ordinarily sent to directors P. G. & E. sends to Fogarty or Freeman every week the following reports, which are submitted otherwise only to members of the executive committee (Pet. Ex. 33 and 45 (R. 1908)):

(1) Cash reports showing collections and disbursements;

(2) Expenditures authorized under general manager estimates submitted to the executive committee for approval;

(3) System generating report showing power output, system peaks and precipitation data;

(4) Consolidating operating report of the Natural Gas Division of gas received and gas sent out;

(5) Statement of new business connected, electric and gas;

(6) Minutes of meetings of the executive committee.

P. G. & E. sends monthly to Fogarty or Freeman, the following reports, which are submitted to members of its executive committee or to its directors (R. 418–425, 749, 1908–1909):

(1) Customers' statement showing gain or loss in customers by departments and divisions;

(2) Capital expenditures statement showing gross capital expenditures and property retired, work in progress, general

manager estimates transferred to plant account, capital expenditures covered by division managers' authorization, and status of purchasing department contracts;

(3) Consolidated income statements in comparative form—month, year to date, and 12 months to date, with supplementary statement showing revenue and expenses by major departments, accounting classifications, and geographical divisions;

(4) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

P. G. & E. also regularly sends the following material to Fogarty or Freeman, although such material is not furnished either to its directors or the members of its executive committee (R. 1909):

(1) Minutes of meetings of the board of directors;

(2) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers;

(3) Copies of gas and electric rate schedules, revised from time to time by the filing of new schedules with the California Railroad Commission;

(4) Copies of "Report for Insurance Companies" prepared annually and sent to large insurance companies and other institutional investors;

(5) Statistical statements prepared by the Department of Vice President and Executive Engineer;

(6) Rate schedules filed with the California Railroad Commission;

(7) Court decisions and orders of the Railroad Commission of interest to P. G. & E.

North American has never requested any information from P. G. & E. which has not been furnished.

Black and Fogarty have called each other by telephone from four to nine times each year since Black became president. Their conversations were with regard to the bond market, settlement of a rate case, and contemplated refundings. (R. 1162–1163, 1446.) Black has been in New York twice and Fogarty in San Francisco four times since 1935. On each of these occasions Fogarty and Black discussed petitioner's affairs in a general way. (R. 1080, 1484–1487.) In connection with public financing by P. G. & E., Black talked to Fogarty on the telephone to obtain his opinion on the bond market (R. 1273–1274, 1537). He also sought Fogarty's advice as to discounts in connection with a later sale to institutional investors of a $15,000,000 bond issue (R. 1289).

North American has never performed any services for P. G. & E. and, other than the payment and receipt of dividends, has never had any monetary transactions with P. G. & E. (R. 228, 525, 545, 1083, 1582).

The record shows only one occasion, prior to the time when Black became president, when North American's wishes on a particular matter were contrary to the action of P. G. & E.'s directors. In 1933, on the recommendation of Hockenbeamer, the directors reduced the dividend on the common stock. North American's president called Hockenbeamer and requested that the matter be reconsidered. The matter was not reconsidered. (R. 670, 639–641, 870–871, 1067–69.)

The record also contains testimony, not challenged by the Commission, that petitioner's local directors are men of substance with a keen sense of local pride in their community. In addition there were of course protestations on the part of both P. G. & E. officials and of North American officials as to the absence of control or controlling influence.

On the basis of this record the Commission determined that P. G. & E. had not sustained the burden of proving that its management and policies were not subject to a controlling influence by North American. The Circuit Court of Appeals affirmed, at first by a two to one decision (R. 1699–1738), and then, upon reargument before the court *en banc* (R. 1739–1740), by an equally divided court (R. 1741).

ARGUMENT

1. Since more than 10 percent of petitioner's outstanding voting securities are owned by

North American, petitioner is a "subsidiary company" of North American under Section 2 (a) (8) (A) of the Act. The Commission cannot enter an order declaring that petitioner is not a subsidiary company of North American unless it finds that petitioner complies with the three statutory conditions contained in the second paragraph of Section 2 (a) (8), *infra*, p. 29.[5]

The Commission was unable to find that petitioner had satisfied the third of these conditions, that petitioner's management and policies are not "subject to a controlling influence" by North American "so as to make it necessary or appropriate in the public interest or for the protection of investors and consumers" that petitioner be regulated as a subsidiary of a registered holding company.[6]

The question whether petitioner came within the quoted language was one to be determined by the Commission, and the facts found, and factual inferences made by, the Commission are binding upon the courts so long as they have "warrant in

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[5] *Detroit Edison Co.* v. *S. E. C.*, 119 F. (2d) 730, 739 (C. C. A. 6th), certiorari denied, 314 U. S. 618; *Public Service Corporation of New Jersey* v. *S. E. C.*, 129 F. (2d) 899, 902 (C. C. A. 3d), certiorari denied, 317 U. S. 691; *Hartford Gas Co.* v. *S. E. C.*, 129 F. (2d) 794, 796 (C. C. A. 2d); *American Gas and Electric Company* v. *S. E. C.*, 134 F. (2d) 633 (App. D. C.), certiorari denied, 319 U. S. 763; *Koppers United Co.* v. *S. E. C.*, 138 F. (2d) 577 (App. D. C.).

[6] The Commission deemed it unnecessary to consider the question raised under clauses (i) and (ii) of Section 2 (a) (8) since the petitioner did not meet the conditions of clause (iii). These clauses are set out in the Appendix, *infra*, p. 29.

the record and a reasonable basis in law." *National Labor Relations Board* v. *Hearst Publications, Inc.*, No. 336, p. 15; *Rochester Telephone Corp.* v. *United States*, 307 U. S. 125, 146; *Gray* v. *Powell*, 314 U. S. 402; *National Labor Relations Board* v. *Southern Bell Tel. & Tel. Co.*, 319 U. S. 50. This was an issue of fact not in any material respect different from that in any of the other cases which have arisen under Section 2 (a) (8) of the Act.[7]

Although the record reveals no instance when North American has affirmatively directed petitioner's management or policies, the record clearly sustains the conclusion that this lack of interference was deliberate and due to North American's satisfaction with the manner in which petitioner's affairs were being conducted (R. 1545–1548, 1642–1643). Apart from the fact that it was in the interest of good "public relations"

[7] As in those cases (see note 5, *supra*) the problem for the Commission here was essentially that of weighing objective evidence of control or controlling influence. This evidence included undisputed evidence as to the amount and character of the concentrated voting rights held and exercised by the parent company as compared with the rights held and exercised by others and the extent that the public holdings might be diffused among numerous scattered investors—against which were opposed the otherwise uncontradicted protestations of company witnesses as to the absence of the practical effects that would normally be expected from such holdings. As the Commission's opinion indicates (R. 1919, 1920, 1928 fn. 27), the facts indicative of controlling influence are in some respects stronger and in some respects weaker than in the cases previously decided.

(R. 1642, 1922) for petitioner to be regarded as a local company, it should be noted that the whole period since Black became president in November of 1935 is the period since the passage of the Holding Company Act, when both petitioner and North American were interested in avoiding the legal status of a subsidiary for petitioner. It is not surprising therefore that there was an avoidance of unnecessary participation by North American in the formal deliberations of petitioner's management. The importance of North American's investment in petitioner's common stock is shown by the fact that the investment is carried on its books at approximately $63,000,000 and the dividend income therefrom represents from 20% to 25% of its corporate income. Since no other stockholder of petitioner owns as much as 2% of its voting securities, North American would be a formidable opponent were it to engage in a proxy fight with the local directors.* Regard-

*Since the preferred stockholders of P. G. & E. have had an uninterrupted record of receiving their fixed preferential dividends, which are currently being earned by a substantial margin, they are far less likely than common stockholders to evidence an interest in managerial problems. For that reason the concentration of North American's holdings in the common stock and its 32.89% interest in that stock is particularly significant in considering a possible contest over control. In appealing for the support of fellow stockholders North American would have the advantage of being able to point to many years of experience in the public utility field, to the close study given by its officers to petitioner's affairs, and also to its own tremendous stake in the earnings of petitioner.

less of whether its efforts to oust the local management would be successful, its initial advantage would be a potent factor in influencing that management to accede to requests which North American might make.[9] Furthermore, the concentration of voting power in North American makes it virtually impossible for any other interest or group of interests to elect a majority of the directors. Indeed, without North American's acquiescence petitioner would not even have had a quorum for the conduct of an annual meeting in any year since 1932 (R. 1898, 1899.).

The Commission also considered significant the position of Black, P. G. & E.'s president. After Black's election as president, North American was willing to forego representation on petitioner's executive committee and to reduce its representation on petitioner's board from three to two. For eight years prior to becoming presi-

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[9] As stated in *Detroit Edison Co.* v. *S. E. C.*, *supra*, note 5, at pp. 738–739: "The present Act undertakes to bring within its ambit all subsidiaries subject to 'controlling influence' of a parent. This phrase should be construed in the light of the purpose of the Act of which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, of exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully."

dent of P. G. & E., Black was a senior executive officer of North American and considered one of its most capable men. During the years 1930 to 1935, he, more than any other person in North American's organization, kept in close touch with petitioner's affairs and was responsible for looking after North American's investment in that company. In view of Black's association with North American, the Commission thought it unlikely that he would treat any suggestions that company might make as carrying no more weight than those of any stockholder.

The experience of the Commission in this field especially qualified it to draw the conclusion of ultimate fact as to whether these considerations gave North American a "controlling influence" over petitioner,[10] and its judgment was not unreasonable, or without warrant in the record or basis in the law.

2. Petitioner contends that the Commission misconstrued the Act. It intimates that the Commission's decision is that the application was denied "irrespective of whether in fact Pacific Gas is subject to its [North American's] 'controlling influence' ". (Pet. p. 3.) But this has never been the Commission's position, as is apparent from its opinion (R. 1883–1931) and its conclusion that (R. 1928): "* * * we hold

[10] *National Labor Relations Board* v. *Hearst Publications, Inc.*, No. 336, p. 15; *Gray* v. *Powell*, 314 U. S. 402.

that applicant has not sustained the burden of proving that it is not 'subject to the controlling influence' of North American within the meaning of Section 2 (a) (8)." [11]

The ownership of more than 10% of the voting stock of P. G. & E. by North American placed P. G. & E. presumptively in the class of a subsidiary, subject to being removed from that category upon a proper showing that it was not subject to a "controlling influence" by North American. The Commission did not, as petitioners contend (Pet. p. 26), treat ownership of more than 10% of the voting stock by North American as being, "in and of itself, sufficient ground for denying the application"; the Commission has, on the contrary, granted a number of exemptions where over 10% of the stock was owned.[12] The Commission did, however, give proper weight to the facts among others that North American held by far the largest block of securities in P. G. & E., amounting to 32.89% of the common stock and 17.71% of the voting

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[11] The petitioner's development of the argument indicates that it believes that the Commission, in order to deny an application, must make an affirmative finding that the applicant is "subject to a controlling influence." This ignores the structure of the "control" provisions of the statute, which place upon the applicant, who holds more than 10%, the responsibility for showing that it is not subject to such a controlling influence.

[12] The cases are collected in the Commission's opinion (R. 1928–1929 n.).

power, and that the next largest holder owned less than 2% of the securities, while the remainder was scattered. The fact that exemption is possible and indeed is necessary only when more than 10% is owned does not render the extent of ownership irrelevant.

The main quarrel of P. G. & E. with the Commission's findings relates to the interpretation of the statutory phrase "controlling influence" and its application to the facts of this case. The interpretation adopted by the Commission is completely in harmony with that approved by all courts which have dealt with this problem.[13] The Commission in this case, as in previous cases, interpreted the phrase "controlling influence" to require something less, in the form of influence over the management or policies of the company, than "control." The use of the term "control" in clauses (i) and (ii) in contrast to the phrase "controlling influence" in clause (iii) clearly supports this distinction. Section 2 (a) (8) contains no indication that active and overt exercise

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[13] *Detroit Edison Co.* v. *S. E. C.*, 119 F. (2d) 730 (C. C. A. 6th), certiorari denied, 314 U. S. 618; *Public Service Corporation of New Jersey* v. *S. E. C.*, 129 F. (2d) 899 (C. C. A. 3d), certiorari denied, 317 U. S. 691; *Hartford Gas Co.* v. *S. E. C.*, 129 F. (2d) 794 (C. C. A. 2d); *American Gas and Electric Company* v. *S. E. C.*, 134 F. (2d) 633 (App. D. C.), certiorari denied, 319 U. S. 763; *Koppers United Co.* v. *S. E. C.*, 138 F. (2d) 577 (App. D. C.).

of control is the test,"[14] and the Commision concluded that latent power was sufficient. The application of this standard to determine whether a "controlling influence" exists has frequently been a troublesome question necessitating, as in this case, the most thorough exploration of historical and potential relationships between the companies involved. As the interpretation of the agency charged with the administration of this Act, the Commission's construction of "controlling influence" is entitled to[15] and has been given great weight.[16]

Petitioner's reference to the brief of the Commission in this Court in the *Electric Bond and Share Co.* v. *S. E. C.*, 303 U. S. 419, and to Senator Wheeler's statements in the course of the legislative debate are beside the point (Pet. pp. 6–11). These remarks were directed generally to the type of regulation which the Act provides rather than to precise definitions. Viewed in their context, these statments describe merely the more usual situations embraced by the Act and do not attempt to deal with all variations. Indeed,

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[14] In the original draft of the Act (H. R. 5423, 74th Cong., 1st Sess., 1935, p. 7; S. 1725, 74th Cong., 1st Sess., 1935, pp. 7–8), a subsidiary company was defined to include "any company over which such holding company *exercises* a material influence." (Italics added). The substitution in the final draft of the words "subject to" for the word "exercise" is of significance.

[15] *Gray v. Powell*, 314 U. S. 402, 412.

[16] See note 13, *supra*.

the legislative history shows that the phrase "controlling influence" was intended to provide flexibility in order to "meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take." S. Rep. 621, 74th Cong., 1st Sess., p. 23; H. Rep. 1318, 74th Cong., 1st Sess., p. 9.

3. Petitioner contends that the court erred in affirming the Commission's order by an equal division (Pet. p. 31). As we understand petitioner's argument, it is that the review proceeding in the Circuit Court of Appeals under Section 24 (a) of the Act is in the nature of an original determination of a justiciable controversy which must be decided for or against the petitioner by a majority of the court. Petitioner concedes (Pet. p. 33) that it is proper for an equally divided appellate court to affirm a *judicial* decision but urges a distinction with regard to decisions of an *administrative* tribunal. To support the argument, cases are cited which either involve the entry of a judgment in the first instance (*In re First Congressional District Election,* 295 Pa. 1, 144 Atl. 735 (1928)), or depend upon a statute which requires a majority of the judges of the court to issue any order, judgment or decree (*Deglow* v. *Kruse,* 57 Ohio St. 434, 49 N. E. 477 (1898); *In re Kings Co. E. R. Co.,* 78 N. Y. 383 (1879)). These cases are clearly irrelevant and petitioner's contention is without merit.

Under the provisions of Section 2 (a) (8) here involved—as distinguished from other types of statutes, and indeed certain other orders of the Commission under the Holding Company Act[17] — the orders of the Commission are self-operative. The petitioner was subject to the Act as a subsidiary of North American by force of the statute itself, and could be relieved of its responsibilities as such only on a Commission finding that it was "not subject to a controlling influence" by North American. The Comission's refusal to make such a finding left the statute operative as to petitioner unless the Commission's determination should be set aside on review.[18]

"Affirmance" by the reviewing court thus has no greater or different effect than a failure to set

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[17] It is unnecessary for present purposes to consider the effect of an equally divided reviewing court upon orders of the Commission under other provisions of the Act, or the possibly different problem which might be presented under such statutes as the original Federal Trade Commission Act and the National Labor Relations Act where sanctions for the administrative order are dependent upon a judicial decree of enforcement.

[18] The filing of an application in good faith under Section 2 (a) (8) serves by the terms of the section to exempt the applicant "until the Commission has acted upon such application." This statutory exemption thus terminated with the entry of the Commission's order here under review. The proceedings with respect to the *ex parte* "stay" of the Commission's order entered by the court below are described in note 21, *infra*.

aside or a dismissal.[19] In the review proceeding the burden is on the petitioner to establish his case, both because of his position as applicant for an exception under the statute and because of the weight given to an administrative determination.[20] If the judges of the reviewing court divide equally, the Commission's order cannot be set aside, for petitioner has not satisfied this burden. The situation is comparable to that of a single judge who finds the considerations in a case evenly balanced; he then decides against the party required to make an affirmative showing. Thus even if the case is not governed by the well-established rule applicable to appellate review of the decisions of a lower court, the result is necessarily the same. It should be noted that there is no indication of dissent below from the conclusion that an equal division among the judges as to the merits should result in affirmance of the Commission's order (R. 1776).

The differences of opinion among the judges of the Ninth Circuit in this case do not presage any

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[19] In *Detroit Edison Co.* v. *Securities and Exchange Commission*, 119 F. (2d) 730, 740 (C. C. A. 6), certiorari denied, 314 U. S. 618, the action of the circuit court of appeals sustaining the Commission's order took the form of merely denying the petition to review.

[20] This is true as to conclusions of law as well as findings of fact; the weight which this Court has ascribed to the former (*St. Joseph Stock Yards* v. *United States*, 298 U. S. 38, 53; *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 549) should prevent a court from setting them aside if it thought the considerations evenly balanced.

similar divergence of viewpoint in other cases. Both the Commission's decision and petitioner's contentions turn upon the facts of this particular case, and it cannot be assumed that an identical situation will again come before the court. For this reason the equal division of the court below is not in itself sufficient to warrant review by this Court.

Petitioner urges that certiorari be granted at least for the purpose of remanding to the court below for further consideration when the existing vacancy in that court is filled. This contention was made to the court below as a ground for the granting of a second reargument and on consideration was rejected. The exercise of its discretion by the court below in determining not to grant a second rehearing is clearly not subject to re-examination by this Court, except for abuse of discretion. In the light of the extended period during which the case has been pending,[21] no abuse can be claimed in putting an end to further prolongation of the litigation. See the discussion in

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[21] The petition to review was filed September 18, 1941 (R. 1671, 1695), and the second petition for rehearing was denied on February 23, 1944 (R. 1777). During this period and to the present time, the petitioner has not subjected itself to regulation under the Act because of an *ex parte* "stay" granted by the Ninth Circuit (R. 1696, 1777). The Commission's motion to vacate the "stay" was not passed on by the court in either of its decisions, on the ground that it had become moot (R. 1703–1704).

Brown v. *Aspden's Adm'rs,* 14 How. 25, 27, 28.[22]

4. Petitioner argues (Pet. p. 33) that the court below, in affirming by an equal division, left "outstanding" an "obviously erroneous" opinion by a majority of the court on the first hearing. This conclusion is incorrect. The first opinion is not in any sense "outstanding." [23]

The history of the proceedings affirmatively indicates that the novel views of the court on the first hearing were abandoned. The first opinion below (R. 1699–1718), after reviewing the facts and concluding that the Commission's finding as to "controlling influence" was adequately sup-

[22] That case, decided by an equally divided court, contains the following remarks on that subject which are pertinent to petitioner's contentions:

> And if it is to be undertsood, that cases of this description are not to be finally decided without the concurrence of a majority of the whole bench, it would be an useless consumption of time to hear them in the absence of any one judge, because it would be uncertain whether a judgment could follow after the argument. And it is easy to foresee the inconvenience, delay, and expenses to which a practice of that kind would subject the parties, and the uncertainty and confusion it would produce * * * in the order of business as it stands on the docket of the court.

[23] By granting a rehearing the Court vacated its judgment and undertook a fresh consideration of the case. *Hook v. Mercantile Trust Co. of N. Y.*, 95 Fed. 41 (C. C. A. 7th); *United States* v. *A. Bentley & Sons Co.*, 293 Fed. 229 (C. C. S. D. Ohio).

ported in fact and in law (R. 1699–1713),[24] p
ceeded to construe the "public interest" langu
in clause (iii) as creating a separate fourth
quirement rather than as a part of clause (
(R. 1713–1718).[25] The latter construction
not been adopted, briefed or urged by the C
mission, and that fact was expressly made
ground for granting the rehearing (R. 17
Since the Commission did not undertake to s
port it on the rehearing, and since the co
failed to reaffirm it after the final hearing, it m
be deemed abandoned and without any pres
significance.[26] Particularly in view of the C
mission's position, it is clear that the superse
opinion can no longer be regarded as author
tive in this respect, much less as the source
confusion urged by petitioner.

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[24] This portion of Judge Haney's opinion contains, in
view, an excellent discussion of both the law and the f
of the case.

[25] It should be noted that petitioner does not in its peti
for certiorari challenge the Commission's application or
struction of the "public interest" clause in Section 2 (a)

[26] Further evidence that those judges of the Ninth Cir
who voted to affirm the Commission's order did not ac
the comments made in the earlier majority opinion conc
ing the construction of the "public interest" provisions
pears from Judge Garrecht's dissenting opinions. In
earlier dissenting opinion Judge Garrecht vigorously
tacked this construction (R. 1737, 1738), while in his dis
from the *per curiam* order (R. 1741–1775) he confines h
self to arguing that there is no evidence to support
Commission's conclusions with respect to control
influence.

CONCLUSION

On the merits, the decision below is correct and there is no conflict. The decision turns largely on the facts. Furthermore, the great bulk of the exemption cases under Section 2 (a) (8) have by now been decided; no such cases are now in the courts and only a few applications, most of them of minor importance, are still pending before the Commission. The divergence of opinion among the judges of the Ninth Circuit is thus not likely to affect other cases.

There can be no doubt, in view of the nature and effect of the order under review, as to the correctness of the refusal of the court below, when equally divided, to set aside the order. In any event, if certiorari were granted, disposition of the case on the merits by this Court would render moot the question as to the propriety of the three to three decision.

Accordingly it is respectfully submitted that the petition for a writ of certiorari be denied.

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APPENDIX

The pertinent provisions of the Public Utility Holding Company Act of 1935, 49 Stat. 803, 15 U. S. C., Sec. 79, *et seq.*, are printed at pages 1–14 of the appendix to petitioner's brief. Section 2 (a) (8), upon which this case turns, reads as follows:

> SEC. 2. (a) When used in this title, unless the context otherwise requires—
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> * * * * *
>
> (8) "Subsidiary company" of a specified holding company means—
>
> (A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; and
>
> (B) any person the management or policies of which the Commission, after notice and opportunity for hearing, determines to be subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or con-

sumers that such person be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies.

The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying

or otherwise disposing of, such application. As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. Any action of the Commission under the preceding sentence shall be by order. Any application under this paragraph may be made by the holding company or the company in respect of which the order is to be entered, but as used in this paragraph the term "applicant" means only the company in respect of which the order is to be entered.

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In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 55

PACIFIC GAS AND ELECTRIC COMPANY, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINIONS BELOW

The decision of the Circuit Court of Appeals for the Ninth Circuit affirming the order of the Commission by an equally divided court (R. V, 1741), and the dissenting opinion of Judge Garrecht (in which Judge Mathews joined) (R. V, 1741), are reported in 139 F. (2d) 298.[1] The

[1] An earlier opinion in which the circuit court of appeals, by a majority of the three judges then sitting, affirmed the order of the Commission (R. V, 1699), is reported in 127 F. (2d) 378. After this first opinion a petition for rehearing was granted and the case was reargued before all seven judges of the court, sitting *en banc*. Judge Haney, who had written

opinion and order of the Commission (R. VI, 1883), dated September 10, 1941, are not yet reported.

JURISDICTION

The decree of the circuit court of appeals was entered on November 18, 1943 (R. V, 1776). A petition for rehearing was denied on February 23, 1944 (R. V, 1777). The petition for a writ of certiorari was granted on May 22, 1944. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, made applicable by Section 24 (a) of the Public Utility Holding Company Act of 1935.

QUESTIONS PRESENTED

1. Was there warrant in the record and a reasonable basis in law for the determination of the Securities and Exchange Commission that petitioner had not shown that its management and policies were "not subject to a controlling influence" by The North American Company within the meaning of Section 2 (a) (8) of the Public Utility Holding Company Act of 1935?

2. Did the court below err in entering a decree affirming the Commission's order when less than

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the earlier opinion on behalf of the majority, died between the second argument and the decision, with the result that the final decision was by an equally divided court of six judges. Only two of the three dissenting judges joined in the dissenting opinion.

a majority of the judges participating concurred in such action?

STATUTE INVOLVED

Section 2 (a) (8) of the Public Utility Holding Company Act of 1935 (49 Stat. 803, 807, 15 U. S. C. 79b (a) (8)) reads, in pertinent part, as follows:

> Sec. 2. (a) When used in this title, unless the context otherwise requires—
>
> * * * * *
>
> (8) "Subsidiary company" of a specified holding company means—
>
> (A) any company 10 per centum or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held with power to vote, by such holding company (or by a company that is a subsidiary company of such holding company by virtue of this clause or clause (B)), unless the Commission, as hereinafter provided, by order declares such company not to be a subsidiary company of such holding company; * * *
>
> The Commission, upon application, shall by order declare that a company is not a subsidiary company of a specified holding company under clause (A) if the Commission finds that (i) the applicant is not controlled, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) either through

one or more intermediary persons or by any means or device whatsoever, (ii) the applicant is not an intermediary company through which such control of another company is exercised, and (iii) the management or policies of the applicant are not subject to a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed in this title upon subsidiary companies of holding companies. The filing of an application hereunder in good faith shall exempt the applicant from any obligation, duty, or liability imposed in this title upon the applicant as a subsidiary company of such specified holding company until the Commission has acted upon such application. Within a reasonable time after the receipt of any application hereunder, the Commission shall enter an order granting, or, after notice and opportunity for hearing, denying or otherwise disposing of, such application. * * *

STATEMENT

1. *Summary of the Proceedings*

The petitioner, Pacific Gas and Electric Company (hereinafter referred to as P. G. & E.), filed

an application under Section 2 (a) (8) of the Public Utility Holding Company Act of 1935 (hereinafter referred to as the Act) for an order declaring it not to be a subsidiary of The North American Company (hereinafter referred to as North American). The application was denied (R. VI, 1883 *et seq.*).

P. G. & E. is predominantly an electric and gas public utility operating company (R. I, 45–100).[2] As of the date of its application for an order declaring it not to be a subsidiary of North American, the latter company owned, controlled and held with power to vote 32.89% of petitioner's common stock, constituting 17.71% of P. G. & E.'s outstanding voting securities (R. I, 75).[3]

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[2] Petitioner is also a holding company, but has been exempted from regulation as such under the Act by reason of its intrastate character. Concurrently with the filing of its application for an order declaring it was not a subsidiary of North American, petitioner filed an application pursuant to Section 3 (a) (1) and (2) of the Act for an exemption as a holding company with respect to its ownership of 45.8% of the voting securities of Vallejo Electric Light and Power Company, an electric utility company operating in Vallejo, California (R. I, 2–100). This application was granted by the Commission (R. VI, 1932), and no question with respect thereto is raised in the present proceedings.

[3] Since the date of the Commission's order, North American has distributed some of petitioner's common stock as dividends. As of October 2, 1944, its holdings had been reduced to 24.99% of the common stock, comprising 13.02% of petitioner's voting securities. North American has committed itself to a program of systematic disposition of its P. G. & E. stock under which it will reduce its holdings below 10% by January, 1946, if dispositions are continued at the present

Since more than 10% of P. G. & E.'s outstanding voting securities are owned by North American, petitioner is a "subsidiary company" of North American under Section 2 (a) (8) (A) of the Act, unless, under the second paragraph of that section, the Commission should enter an order declaring it not to be such a subsidiary. P. G. & E.'s application for such an order alleged and offered to establish that (1) it is not controlled, directly or indirectly, by North American; (2) it is not an intermediary company through which control of another company is exercised; and (3) its management or policies are not subject to a controlling influence, directly or indirectly, by North American, so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations, duties and liabilities imposed in the Act upon subsidiary companies (R. I, 2–100).

On September 4, 1940, the Commission issued its notice of and order for hearing with respect to petitioner's application (R. I, 101). Hearings were held before a trial examiner in San Francisco and New York. At the request of petitioner, the Commission directed the Trial Examiner to file a Report and Findings of Fact. The Report and

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rate. It is also under order to dispose of that stock and it has urged no error in that determination except the general constitutional objection raised in the proceeding now pending on the special calendar of this Court, *North American Co.* v. *Securities and Exchange Commission*, No. 1, present Term.

Findings of Fact filed by the Trial Examiner (R. VI, 1779–1882) concluded that petitioner was entitled to the order which it sought, and counsel for the Commission filed exceptions. Briefs were filed and the matter was argued orally before the Commission. On September 10, 1941, the Commission issued its findings and opinion (R. VI, 1883–1931) and entered its order (R. VI, 1932–1933) denying petitioner's application to be declared not to be a subsidiary of North American because it was unable to make the finding required by clause (iii) of Section 2 (a) (8), i. e., that petitioner's management and policies "are not subject to a controlling influence" by North American "so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers" that petitioner be subject to the Act.[4]

Upon a petition for review, the circuit court of appeals affirmed the Commission's order, at first by a two to one decision (R. V, 1699–1738), and then, upon reargument before the court *en banc* (R. V, 1739–1740), by an equally divided court (R. V, 1741).[5]

[4] The Commission deemed it unnecessary to consider the questions raised under clauses (i) and (ii) of Section 2 (a) (8), since the petitioner did not meet the conditions of clause (iii) and compliance with the statutory conditions contained in all three clauses is a prerequisite to exemption under the Section.

[5] Section 2 (a) (8) grants a temporary exemption, based upon the filing of an application in good faith, "until the

2. *The facts*

The facts, as detailed in the findings and opinion of the Commission (R. VI, 1883–1931), may be summarized as follows:[6]

P. G. & E. is a California corporation, organized in 1905, and primarily engaged in the production, purchase, transmission, distribution and sale of electric energy and natural and manu-

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Commission has acted upon such application." Notwithstanding the fact that the Commission acted upon its application on September 10, 1941, the petitioner has not subjected itself to regulation under the Act, relying upon an *ex parte* "stay" granted by the circuit court of appeals on September 19, 1941, and continued by orders dated February 23 and October 9, 1944, pending the outcome of the case in this Court (R. V, 1696, 1777, 1936). The Commission's motion to vacate the "stay" was not passed on by the court in either of its decisions, the stated ground in the first decision being that it had become moot (R. V, 1703–1704).

[6] The petitioner, at pages 10–21 of its brief, attempts to summarize the findings of the trial examiner, stating that "these findings may be considered as an undisputed statement of the facts of the case." In its opinion (R. VI, 1912), the Commission had stated: "There is *almost* no dispute *as to the facts* in the case as they are set forth in the trial examiner's report and in the briefs of both counsel." [Emphasis supplied.] Although it is true that there was no dispute as to the evidentiary facts, certain inferences and conclusions based thereon made by the trial examiner and set forth in his findings, which the petitioner has undertaken to summarize, have not been accepted or adopted by the Commission. The Commission reviewed the detailed facts in the record and drew its own inferences and conclusions. Accordingly, the trial examiner's "findings" may not be considered as an undisputed statement of the facts of the case. Our counterstatement of the facts is set forth in the text.

factured gas in northern and central California. Since 1905, it has acquired, by direct purchase or by exchange of stock, the properties of over 400 separate companies, and it is today one of the largest public utility companies in the United States. (R. I, 3, 127–140.) It supplies electricity to approximately 909,155 customers residing in 372 California communities, and supplies gas at retail to about 636,316 customers in more than 180 California communities. P. G. & E.'s total assets, as of June 30, 1940, were stated on its books at $791,146,218 (Pet. Ex. 36f). Its gross operating revenues for 1939 amounted to $107,-175,353 (R. I, 94).

North American, a New York corporation, is exclusively a holding company registered as such under the Act. It does not operate any utility properties, but has operating subsidiaries in several states. It is by far the largest stockholder of P. G. & E. As of August 1, 1940, North American owned, controlled or held with power to vote 2,059,670 of petitioner's 6,261,273 shares of outstanding common stock (R. I, 74, 75). This represented 32.89% of petitioner's outstanding common stock and was carried on North American's books at over $63,000,000. The dividends from it have constituted between 20% and 25% of North American's corporate gross income. (R. IV, 1545–6.) As of the same date, P. G. & E. also had outstanding 5,370,822 shares of preferred

stock, none of which was owned by North American (R. I, 74). This stock has equal voting rights with the common, so that North American's common stock holdings constituted 17.71% of petitioner's total outstanding voting stock (R. I, 75).

The next largest stockholder, Standard Gas and Electric Company, owned, as of the same date, 200,420 shares of petitioner's common stock or 1.72% of its voting securities (R. I, 75).[7] Generally speaking, the remainder of P. G. & E.'s voting securities are widely scattered among its 95,891 stockholders (Pet. Ex. 20 and 29).

North American's interest in P. G. & E. dates back to 1930. At that time North American had a subsidiary holding company, Western Power Corporation, with three public utility subsidiaries operating in California. One of these subsidiaries, Great Western Power Company of California, had been the principal competitor of petitioner and derived 90% of its operating revenue from territory also served by petitioner. In June, 1930, P. G. & E. issued 1,825,000 shares of its common stock in exchange for Western Power Corporation's holdings of securities in its California public utility subsidiaries and the cancellation of

[7] Other large stockholders are The Sun Life Assurance Company of Canada, which owns 120,198 shares of common stock and 55,000 shares of preferred stock; Pacific Lighting Corporation, a California corporation, which owns 131,900 shares of common stock; and the American Superpower Corporation, a Delaware corporation, which owns 100,000 shares of common stock (Pet. Ex. 20 and 21).

certain indebtedness owed by these subsidiaries to Western Power Corporation (Pet. Ex. 6; R. III, 1051–3). James B. Black, later to become president of P. G. & E., was the principal representative of North American in the negotiations with P. G. & E. which led to its acquisition of North American's California subsidiaries. Black had been vice president, general manager and a director of Great Western from 1922 until 1927, at which time he went to New York as vice president of North American, with the principal duty of keeping in touch with and assisting the three California subsidiaries. Close contact was maintained between the local operating men and Black. (R. III, 1046–1053; VI, 1892–3.)

In 1936 Western Power Corporation was dissolved, and its holdings of P. G. & E. common (including 252,055 additional shares which had been purchased in 1931 by the exercise of preemptive rights and the acquisition of which had therefore not increased Western's—and North American's—proportionate interest in P. G. & E.) were transferred to North American (Comm. Ex. 56, 57 and 58).

At the time of the negotiations with North American petitioner's directors were apprehensive of the power that North American would acquire by the ownership of such a large block of securities. Hockenbeamer, then president of P. G. & E., told the directors that North Ameri-

can had given him assurance that it would not "dominate" or interfere with P. G. & E.'s management.[8] Black testified that he assured Hock-

[8] Thus, Allen L. Chickering, one of the petitioner's directors, testified (R. II, 735, 778–779):

Q. Now, during those discussions and before the transaction was authorized by the Board of Directors, were there any discussions with respect to the position of the North American Company as a stockholder after the transaction was consummated?

A. Yes sir. The first thing that I objected to was the North American domination. I said I was afraid of it and Mr. Hockenbeamer said that he had been assured that there would be no domination, that they simply have an investment position; they wanted to have three members on the Board of Directors but that they would not exercise any domination or attempt to increase their holdings. Now, I only know that from Mr. Hockenbeamer. I didn't talk with Mr. Black myself.

Q. That statement was made by Mr. Hockenbeamer?

A. Yes sir.

Q. Before the transaction was consummated?

A. To the Executive Committee?

Q. Yes.

A. It was one of the first points the committee brought up, the objection of that sort.

* * * * *

Q. What discussion was had in 1929 and 1930 concerning the extent to which it was contemplated that North American might participate in the Applicant's affairs if it acquired a large block of its common stock?

A. Well, naturally all we knew was that Mr. Hockenbeamer told us and I for one, and several other directors, were apprehensive of any holding company acquiring such a large interest and we voiced that apprehension in the meetings of the Executive Committee. Mr. Hockenbeamer told us that the North American Company would take an investment interest only and would not

enbeamer that, in so far as he could direct the policy, there would be no interference by North American. However, with respect to this general understanding, Black stated that "There was nothing ever said about how long it should last or any considerations as to changes if conditions changed in the future" (R. III, 1060–1). Apparently an attempt had been made by P. G. & E. to secure an irrevocable proxy from North American, but North American seems to have been unwilling to go so far in committing itself to non-interference.[9]

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make any effort to control us. He also told us that they would not increase their proportionate ownership in our stock. Whether there was any agreement to that effect or not, I don't know, but we took Mr. Hockenbeamer's word for it.

Q. Would you say that those assurances by North American were received at the insistence of certain members of the Applicant's Board?

A. Well, I think that all of us felt that way, Miss Calkin. I think even Mr. Hockenbeamer felt that way.

[9] Mr. Hockenbeamer, president of P. G. & E., sent a cable to C. O. G. Miller, one of the petitioner's directors, then on a world cruise, reading in part: "Three directors one member executive committee no proxy but positive assurances non interference" (Pet. Ex. 43A). In connection with this cable and the apparently unsuccessful attempt to secure an irrevocable proxy, Miller testified (R. II, 620–621):

Q. Referring to Applicant's Exhibit 43 (a), I believe, which is the telegram you received from Mr. Hockenbeamer, wherein it is stated that, in substance, the North American Company would not give a proxy, what was your understanding of that language in that telegram?

A. The meaning of the telegram?

Q. Yes—that portion of it.

The agreement between North American and P. G. & E. was never formalized, nor was any time limit placed on North American's assurances of non-interference (R. I, 226–7, 257–9; II, 735–6, 778–9, 831–2; III, 1059–1062, 1123, 1127–1130).

It was orally agreed, at the time of the 1930 transaction, that North American would be entitled to name three directors of P. G. & E.'s Board of fifteen [10] and one member of its Executive Committee (consisting of four directors and the president of the company) (R. III, 1059–1062, 1123).

Pursuant to this oral agreement, Black, then a vice president of North American, Guy C. Earl, a former president of Great Western Power Company of California, and Edwin Gruhl, then vice president and general manager of North American, were elected to P. G. & E.'s Board on June 18, 1930. Black was also appointed to the Executive Committee but was replaced in a few weeks by Earl. (Pet. Ex. 16 and 17.)

A. That the North American Company would not give an irrevocable proxy, but had promised in good faith not to attempt to obtain control or seek proxies.

Q. It means it would not give any irrevocable proxy for the slate of the directors that the management might choose?

A. I would put it broader than that: That they were unwilling to give an irrevocable proxy to anyone for a long period of years. It was not unexpected by me, at least.

[10] This was the minimum number of directors which North American would be able to elect by cumulating and voting its shares (R. VI, 1823).

Earl served continuously and very actively as a director and member of the Executive Committee until his death in June, 1935. During this period he attended substantially all of the meetings of these two bodies, and took copious notes of what transpired, which he sent to Black together with copies of the minutes of the meetings of the Executive Committee and various reports which were furnished to directors and Executive Committee members. (Pet. Ex. 19; R. I, 276; III, 1154–1155.) For these services, North American paid Earl $12,000 a year (R. III, 1440); he received no salary from P. G. & E.

During this period one of Black's principal duties as an employee of North American was the maintenance of careful scrutiny over the affairs of P. G. & E., and although he attended only four meetings of petitioner's Board, he was able to watch over petitioner's affairs through Earl's detailed reports and by fairly extensive correspondence with Hockenbeamer. The latter sent numerous reports and financial statements along with his letters, which often gave detailed explanations of P. G. & E.'s operations. (R. III, 1180–3; VI, 1900–1.)

Petitioner's president has always been its chief executive officer (R. VI, 1902). Upon Hockenbeamer's death in 1935, the Executive Committee, which then consisted of three San Francisco business men, decided to recommend to the Board of

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Directors Black's election as president (R. II, 611–612, 633–635). After several conferences with local non-employee directors, C. O. G. Miller, one of the Executive Committee members, called Fogarty, president of North American, and obtained permission to offer the position to Black (R. II, 613–615, 633). Miller then called Black, who agreed to accept the presidency if elected (R. II, 634–635). At the insistence of another director, Miller called Black a second time and asked him whether, if elected president, Black would sever all his relations with North American. Black replied in the affirmative. Shortly thereafter, Black was elected to the presidency. This was in November, 1935, when the Holding Company Act was about to go into effect. (R. II, 611–616, 633–635, 738–742; III, 1442–1445.) Since then, North American has not named a representative on petitioner's Board of Directors to replace Black, nor has it named a representative to the Executive Committee in Earl's place. Thus, since the date of Earl's death and the appointment of Black as president of P. G. & E., North American has had only two directors and has had no representative on the Executive Committee. North American's two other representatives on the Board have attended practically no meetings and no one was ever selected to perform the duties performed by Earl. (R. III, 1155; IV, 1473; Pet. Ex. 16 and 18.) And no one in New York has replaced Black, whose principal

function was to follow P. G. & E.'s affairs closely for North American (R. III, 1155–6; IV, 1473–4).

North American's present representatives on P. G. & E.'s Board are J. F. Fogarty, formerly president of North American and now chairman of its executive and finance committees, and H. C. Freeman, vice president of North American (R. VI, 1901; Pet. Ex. 16).

None of P. G. & E.'s other large stockholders is represented on its Board.[11]

P. G. & E. regularly sends to North American a variety of detailed weekly and monthly reports. After Earl's death, Hockenbeamer instructed Foote, petitioner's secretary, to send North American the same reports and documents Earl had sent (R. II, 496); and, as already stated, Hockenbeamer himself sent numerous reports, frequently accompanied by detailed letters of explanation, to Black, then North American's vice president, in New York (R. III, 1180–1184; VI, 1900–1, 1907–8; Comm. Ex. 72–105).

Fogarty and Freeman, as North American's representatives on P. G. & E.'s Board of Directors, regularly receive the minutes of direc-

[11] The Commission noted the possibility that C. O. G. Miller, chairman of the Board of Pacific Lighting Corporation, which owns 131,900 shares of P. G. & E.'s common stock, might be considered a representative of that company, but indicated that he was not generally so regarded (R. VI, 1901). In any event it is clear that Miller was not a representative of Pacific Lighting Corporation in the sense that Fogarty and Freeman are representatives of North American.

tors' meetings and certain other data sent to all directors.[12] In addition, however, even though they are not members of P. G. & E.'s Executive Committee, they receive the minutes of the weekly meetings of that Committee and all reports and statements regularly made available only to members of that Committee. These are sent to them either weekly or monthly.[13] Furthermore, P. G.

[12] These include (Pet. Ex. 33)—

(1) Consolidated income statements in comparative form—month, year to date, and 12 months to date—with supplementary statements showing revenue and expenses by major departments, accounting classifications, and geographical divisions; (2) Consolidated balance sheets in comparative form, with supporting schedules showing outstanding stocks and bonds, together with income statements and supplementary statistical data.

[13] Fogarty and Freeman receive each week (Pet. Ex. 33; R. VI, 1908)—

(1) Cash reports showing collections and disbursements;

(2) Expenditures authorized under general manager estimates submitted to the executive committee for approval;

(3) System generating report showing power output, system peaks and precipitation data;

(4) Consolidating operating report of the Natural Gas Division of gas received and gas sent out;

(5) Statement of new business connected, electric and gas;

(6) Minutes of meetings of the Executive Committee.

Monthly they also receive the following (Pet. Ex. 33; R. VI, 1908)—

(7) Customers' statement showing gain or loss in customers by departments and divisions;

(8) Capital expenditures statement showing gross capital expenditures and property retired, work in progress, general manager estimates transferred to plant account, capital expenditures covered by division managers' authorization, and status of purchasing department contracts.

& E. also regularly sends to Fogarty and Freeman, as North American's representatives, the following reports and data which are not furnished either to its directors or Executive Committee members (R. I, 419–428; II, 495–9, 523, 747–750; VI, 1909; Pet. Ex. 33 and 45):

(1) Copies of gas and electric rate schedules, revised from time to time by the filing of new schedules with the California Railroad Commission;

(2) Copy of report submitted to the Edison Electric Institute, showing sources and disposition of electric energy and classifications of customers;

(3) Copies of "Report for Insurance Companies" prepared annually and sent to large insurance companies and other institutional investors;

(4) Statistical statements prepared by the Department of Vice President and Executive Engineer;

(5) Rate schedules filed with the California Railroad Commission;

(6) Court decisions and orders of the Railroad Commission of interest to P. G. & E.

North American has never requested any information from P. G. & E. which has not been furnished (R. IV, 1609).

Black and Fogarty have called each other by telephone from four to nine times each year since

Black became president. Their conversations were with regard to the bond market, settlement of a rate case, and contemplated refundings (R. III, 1162–1163, 1446). Black has been in New York twice and Fogarty in San Francisco four times since 1935. On each of these occasions Fogarty and Black discussed petitioner's affairs in a general way (R. III, 1080; IV, 1484–1487). In connection with public financing by P. G. & E. in 1936, Black talked to Fogarty on the telephone to obtain his opinion on the bond market (R. III, 1273–1274; IV, 1537). He also sought Fogarty's advice as to discounts in connection with a later sale of a $15,000,000 bond issue to institutional investors (R. III, 1289). This practice of asking North American's advice in connection with proposed financing had also been followed by Hockenbeamer in telephone conversations with Black when the latter was vice president of North American (R. III, 1066–7, 1263–5; VI, 1905–6).

North American has never performed any services for P. G. & E. and, except for the receipt of dividends, has never engaged in any monetary transactions with P. G. & E. (R. I, 228; II, 525, 545; III, 1083; IV, 1582).

The record shows only one occasion, prior to the time when Black became president, when North American's wishes on a particular matter were

contrary to the action of P. G. & E.'s directors. In 1933, petitioner's directors reduced the quarterly dividend on the common stock from 50 cents per share to 37½ cents per share because of a decreased trend in earnings. North American's president called Hockenbeamer and urged him to have the matter reconsidered, if possible (R. III, 1068–9). Black sent a telegram asking reconsideration (R. II, 670; III, 1067–9). Although the matter was not reconsidered (R. III, 1069), the record does not reveal that any further attempt was made to obtain reconsideration (R. III, 1209).[14] However, in the fall of 1936, Black, who had by then become president of P. G. & E., recommended the restoration of the 50 cents per share dividend and the Board restored the larger dividend. Black testified that the earnings justified the restoration, and that North American had not requested the action. (R. III, 1209–1210; II, 639–641, 870–1; VI, 1911.)

P. G. & E.'s proxy committee for many years has consisted of its president, vice president and general manager, and the secretary and treasurer (R. III, 1088–9). It has been customary for the proxy committee to seek the election of the incumbent directors, including the North American representatives (R. II, 693–4; III, 1144–5).

[14] See note 32, *infra*.

When Black was with North American, he usually wrote Hockenbeamer each year requesting that the current North American representatives be reelected (Comm. Ex. 59, 62, 67, 68). More recently no such requests have been made, but petitioner's proxy committee has nevertheless included the incumbent North American representatives in its proxy, on the assumption that North American would communicate any desire to have the personnel of its representation changed (R. III, 1145, 1469–1470). North American has always forwarded its proxy to the management's proxy committee (R. IV, 1581–2).

Under the corporation laws of California, the presence in person or by proxy of the holders of the majority of the shares entitled to vote in any stockholders' meeting constitutes a quorum for the transaction of business, and if a quorum is not present a majority of the shares in attendance may adjourn the meeting, but no other business may be transacted (R. VI, 1898) (Deering's Civil Code of California (1937), Section 316). Since 1932 (until April 9, 1940) at no meeting were enough shares present, apart from the shares held by North American, to constitute a quorum (R. VI, 1898–9). North American's holdings have represented from 27% to 30% of the total votes

cast at each of the stockholders' meetings held during that period (Pet. Ex. 23, 26).[15]

Apart from evidence regarding the specific matters described above, the record contains testimony, not disputed by the Commission, that P. G. & E.'s local directors are men of substance, with a keen sense of local pride in their community and in their company as a community enterprise.[16] The record further contains uniform protestations, by officials of both P. G. & E. and North American, as to the absence of control or controlling influence. Testimony to this effect,

[15] See the following table (R. VI, 1899):

Date of meeting	Percentage of shares represented in person or by proxy	Percentage of total votes cast by North American	Approximate percentage of voting securities owned by North American at date of meeting	Percentage of total outstanding shares present exclusive of North American
Apr. 12, 1932	67.5		19.2	48.3
Apr. 11, 1933	66.5		18.1	48.4
Apr. 10, 1934	61.0	28.5	18.0	43.0
Apr. 9, 1935	58.3	30.5	18.1	40.2
Apr. 14, 1936	64.1	27.9	18.0	46.1
Apr. 13, 1937	64.3	27.8	17.9	44.4
Apr. 12, 1938	64.5	27.8	17.9	44.6
Apr. 11, 1939	64.9	27.3	17.7	47.2
Apr. 9, 1940	62.6	28.3	17.7	44.9

No record of individual proxies was kept in 1932 and 1933.

[16] In this connection it should be noted that as of August 1, 1940, more than half—52.1% of P. G. & E.'s voting stock—was held by stockholders resident outside the state of California.

which the petitioner regards as "uncontradicted evidence" of compelling weight (see Br., p. 95), is in our judgment more properly to be regarded as constituting the mere argumentative conclusions of the witnesses as to the ultimate issue in the case. As against such testimony, it is clear from the record that, with the exception of the dividend reduction episode mentioned above, North American has always supported P. G. & E.'s management, and has done so as a deliberate business policy fashioned in its own interest. Freeman testified: "It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management" (R. IV, 1642). And Fogarty testified that North American's present inactivity in the affairs of P. G. & E. is due primarily to the fact that P. G. & E.'s business has enjoyed a normal growth and has progressed in a satisfactory manner (R. IV, 1545–6). If conditions changed, so would North American's attitude, for, as Fogarty testified, "If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation," and he and Freeman would then "take a more active part in the directors' meeting than [they] had in the past" (R. IV, 1545–8).

On the basis of a record in which the foregoing evidentiary facts were not in dispute the Commis-

sion decided that P. G. & E. had not sustained the burden of proving that its management and policies were not subject to a controlling influence by North American so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that it be subject to the obligations imposed by the Act upon subsidiaries of holding companies. Accordingly, the Commission denied P. G. & E.'s application for an order declaring it not to be a subsidiary of North American.

If the Commission's order is affirmed and the petitioner is subjected to regulation as a subsidiary company of a holding company under the Act, the principal practical effect will be to require Commission scrutiny of petitioner's security issues and, possibly, to require that such issues be sold at competitive bidding. Regulation as a subsidiary will in addition subject petitioner to a variety of restrictions such as those prohibiting a holding company subsidiary from having on its Board of Directors investment bankers, or commercial bankers from areas outside that in which the company operates. The petitioner contends—and, except as to the requirement of competitive bidding for security issues, we concede—that its policies in the past have not been inconsistent with the restrictions which have been imposed upon subsidiaries under the Act. Subjection of

the petitioner to these restrictions will, however, serve the purposes of the Act in protecting against possible future changes in the petitioner's policies so long as it remains subject to a controlling influence by North American.[17]

SUMMARY OF ARGUMENT

1. The petitioner, in an attempt to pitch the controversy in the field of statutory construction, ascribes to the Commission various interpretations of the Act which it asserts misled the Commission into erroneous application of the standards of Section 2 (a) (8). Thus, the petitioner claims, among other things, that the Commission has construed the phrase "'subject to a controlling influence" as if it referred merely to "influence", whether or not controlling, and has treated it as comprising merely the possibility of "purely hypothetical future machinations". The Commission

[17] See discussion at pp. 70–73, *infra*. Since the Commission's opinion in this case, the Commission has in other proceedings ordered North American to dispose of its holdings of petitioner's stock, and North American has already entered upon a program of disposition which will probably result in bringing its holdings below the statutory 10% within approximately the next year. See note 3, *supra*. Thus, the decision of this case, if favorable to the Commission, will subject the petitioner to the responsibilities and restrictions of a subsidiary for only a relatively short period. However, the validity of the Commission's order is of course to be considered in the light of conditions as they existed when the order was made, at which time there was no basis for forecasting how long petitioner was likely to remain in the status of a subsidiary.

has taken no such position. It has followed its view, consistently applied in its previous decisions in comparable cases and consistently upheld by the courts on review, that the "controlling influence" contemplated by the Act may include latent, unexerised power to exert controlling influence. The petitioner does not now dispute this proposition; and from it must follow the conclusion that a showing of the absence of either past or present active interference in management or policies is not necessarily sufficient to carry the burden of proof that the holding company possesses no latent power to exert a controlling influence. Congress contemplated that the term "controlling influence" should be construed with sufficient flexibility "to meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take". The petitioner's assertion that the Commission has applied an erroneous standard of "controlling influence" is in our judgment merely an argumentative statement of the petitioner's own conviction that as a matter of factual inference the Commission's ultimate conclusion, that petitioner had not established its right to relief, was without rational basis in the record.

The same is true of the Commission's asserted "errors of law" with respect to the burden of proof. There is no basis for claiming that the Commission's occasional use of the word "demonstrate," interchangeably with such practically

synonymous expressions as "show," "prove," "establish," and "meet," was intended to, or did, impose upon the petitioner an improper burden of proof. Nor did the Commission regard the substantial stockholdings of North American as creating an irrebuttable presumption of the existence of controlling influence; it weighed that fact, as evidence, as it did all other pertinent facts, giving consideration not only to the size of North American's holdings but also to the relative size and distribution of other holdings of petitioner's stock, and to the historical facts of North American's position and influence as a stockholder. Upon the whole record, the Commission concluded that the evidence was not sufficiently strong to establish that petitioner was not "subject to a controlling influence" by North American. The dispute as to the soundness of this conclusion involves no substantial issue of law, but merely an issue as to the propriety of the inferences which the Commission drew from the record.

2. The test of the propriety of the Commission's conclusion is not whether the Court would as a matter of first instance have drawn the same inferences from the record as did the Commission, nor even whether other, and conflicting, inferences might not equally well be accepted. It is, rather, merely whether the Commission's conclusion "has 'warrant in the record' and a reasonable basis in law". *National Labor Relations Board* v. *Hearst*

Publications, 322 U. S. 111, 131. The Commission's determination in this case did have "warrant in the record". Undisputed evidence showed that North American held nearly one-third of petitioner's common stock, amounting to 17.71% of its outstanding voting securities, all other stockholdings being relatively small and widely scattered. This investment represented a substantial part of North American's own portfolio, being carried on North American's books at $63,000,000, and the dividend income from it constituting from 20% to 25% of North American's entire corporate income. North American had maintained close scrutiny of petitioner's operations since the inception of their connection; it secured frequent and detailed reports, more extensive even than those received by the petitioner's own Board of Directors and Executive Committee. Petitioner's president since 1935 had been a man who prior thereto was a trusted executive of North American, charged primarily with supervising North American's interest in petitioner. At all stockholders' meetings since 1932 North American's proxy had been necessary to create a quorum; and its stockholdings had at all time been sufficient to give it a veto power over important organic forms of corporate action.

As against these facts, the petitioner urges an absence of evidence of active efforts on the part of North American to control or direct its manage-

ment or policies. The Commission was entitled, however, to conclude that the absence of any such evidence did not establish that North American was not in a position to exercise, and would not have exercised, such controlling influence if at any time it had been in its interest to do so. The record establishes that North American, through the close scrutiny which it maintained over petitioner's operations, was fully satisfied that those operations were being conducted to its advantage, and that no purpose would be served by its undertaking to exert its controlling influence to alter the present managerial policies. North American's representatives on petitioner's Board testified that it was good "public relations" to have petitioner "regarded as a California company, under California management," and that it would be undesirable for North American to intervene in the situation unless "some conditions were to develop which were the result of improper or incompetent management." The Commission's extensive contact with the problem of control relationships not only under the Public Utility Holding Company Act but under the other legislation which it administers gives it peculiar competence to detect and appreciate the subtle means by which controlling influence may be exerted. The question whether, assuming the existence of such a "controlling influence," regulation is necessary or appropriate in the public interest, is likewise one peculiarly for administrative deter-

mination. Here, the Commission determined that petitioner had not shown that its management and policies were not subject to a controlling influence by North American, and that it had also failed to establish that regulation was not necessary or appropriate in the public interest. These determinations, being within its administrative competence and warranted by the record, should be permitted to stand.

3. There is no substance to the petitioner's claim that because less than a majority of the court below concurred in the view that the order complained of should be affirmed, petitioner has been deprived of judicial review contemplated by the Act. The Commission's orders under Section 2 (a) (8) are self-operative, and not dependent upon judicial sanction for their effectiveness. If less than a majority of the reviewing court acts to set them aside, they must stand, as does any judicial order in similar circumstances. In any event, the entire case is now before this Court for decision on the merits, and this Court is in a position to furnish full judicial review. Remand to the circuit court of appeals for a third hearing would serve no purpose but that of delay.

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ARGUMENT

I

THERE IS NO SUBSTANTIAL DISPUTE BETWEEN THE PARTIES AS TO STATUTORY CONSTRUCTION

In view of the frequently expressed reluctance of this Court to disturb administrative findings and factual conclusions which have warrant in the record presented to the administrative body, it is not unnatural that petitioner strains to discover legal issues in controversy, and to impute to the Commission conclusions or assumptions of statutory construction which, if erroneous, might vitiate the Commission's ultimate conclusion that petitioner had not established its right to the relief it sought. These efforts, we believe, must fail. They rest primarily on overrefined analysis of selected phrases in the Commission's opinion, and on tenuous and imaginative inferences, from what the Commission did not say, as to what the Commission might have thought or meant. We believe that a full and fair reading of the Commission's opinion as a whole, and of the affirmative contentions of statutory construction advanced by the petitioner, will suffice to sweep away the asserted issues of law, and place the controversy on its proper basis, as a controversy as to the sufficiency of the record to support the Commission's ultimate factual conclusion.

Whatever may have been the petitioner's position at earlier stages of the case, petitioner does not now contend that the statutory standard may be met by showing merely that no "controlling influence" is being currently exercised. Petitioner concedes in its brief (p. 39) that, at least for the purpose of this argument, "we may assume that the present existence of the power, whether or not in the process of being exercised, is sufficient. That is to say—it may be sufficient if the power exists though quiescent."

That likewise is the Commission's position; and nothing in the Commission's opinion, or in its opinions in comparable cases involving the application of the same statutory standard, justifies the petitioner's assertions that the Commission has accepted "purely hypothetical future machinations" as equivalent to "controlling influence" (Pet. Br., p. 39), or has construed "controlling influence" as meaning "influence" only (Pet. Br., p. 46). Petitioner's assertions, presented as points of statutory construction, in reality amount to argumentative statements of petitioner's own view that the conceded facts could not rationally support the inferences drawn from them by the Commission. That the record does support the inferences drawn from it by the Commission is the subject of Point II of our argument; but before reaching that point, and rather than dispersing the argument over the dozen or so "legal"

issues which the petitioner seeks to inject into the case, we think it best to explain affirmatively what we regard as the proper statutory standard, as it has been construed and applied by the Commission and the courts in this and other comparable cases.

1. *The Meaning of "Controlling Influence"*

In this case, as in others, the Commission has declined to accept, as establishing lack of "controlling influence", a mere showing that the holding company has not actively interfered in the subsidiary's management in the past, or is not currently so interfering. This position must be sound if, as the petitioner now concedes, the existence of a latent, unexercised power to control or to exert a "controlling influence" is sufficient to defeat the claim to exemption; for it would be a *non sequitur* to permit a showing of non-exercise of a power to be determinative of its non-existence. In the language used by the Commission in this case (R. VI, 1913), "to prove an absence of control or controlling influence, the applicant must do more than show that the holding company has not actively interfered with the local management in the past, for, as we understand the language of Section 2 (a) (8), 'control' includes the power to control, and 'subject to a controlling influence' includes susceptibility to domination. Rochester Telephone Corporation *v.* United States, 307 U. S. 125 (1939); The Hartford Gas Company, 8 S. E. C. ____ (1941), Hold-

ing Company Act Release No. 2613; The Detroit Edison Company, 7 S. E. C. 968 (1940)."

This is no novel theory adopted for the purposes of this case, but one consistently applied by the Commission throughout its administration of the Act, and as consistently affirmed by the courts which have reviewed the Commission's orders. In *The Detroit Edison Company*, 7 S. E. C. 968, 969 (1940),[18] the first case under Section 2 (a) (8) to reach the courts, the Commission expressed the doctrine somewhat more fully:

> But whether the holding company has exercised control or effectively exerted influence is, upon application such as this, material only insofar as such circumstances may evidence the existence in the holding company of the ultimate directory power. Inaction on the part of a holding company does not necessarily negate the existence of control or controlling influences. It may only evidence satisfaction with the manner in which a subsidiary is being operated. A subsidiary company, moreover, does not cease to be such merely because it has been given the opportunity to build up an able and self-contained management. The problem is one of fundamentals and not superficialities for, as we understand the statutory language, "control" embraces the power to control and "subject to a controlling in-

[18] Affirmed, *Detroit Edison Co.* v. *Securities and Exchange Commission*, 119 F. (2d) 730 (C. C. A. 6), certiorari denied, 314 U. S. 618.

fluence" includes susceptibility to domination (*Rochester Telephone Corporation* v. *United States, supra*). Consequently, our inquiry must look not merely to the personalities of the managers but primarily to the factors underlying the existence and continuation of the management.

And in *Hartford Gas Company,* 8 S. E. C. 758, 766,[19] the same thought is expressed:

> To satisfy condition (iii) the applicant must show that nothing in the course of relationships between the specified holding company and itself would suffice to make its management or policies "*subject to* a controlling influence, directly or indirectly, by such holding company (either alone or pursuant to an arrangement or understanding with one or more other persons) so as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the applicant be subject to the obligations, duties, and liabilities imposed" in the Act "upon subsidiary companies of holding companies." The phrase "*subject to,*" which we have emphasized, clearly does not imply continuous exertion of controlling influence by the holding company over the operating company. Thus we have pointed out that even where there is complete inaction on the part of the holding company, that fact, in

[19] Affirmed, *Hartford Gas Co.* v. *Securities and Exchange Commission,* 129 F. (2d) 794 (C. C. A. 2).

itself, "does not necessarily negate the existence of control or controlling influences". *The Detroit Edison Company,* 7 S. E. C. 968, 969 (1940).

As noted, this view was affirmed, in the *Detroit Edison* and *Hartford Gas* cases, by the circuit courts of appeals for the sixth and second circuits, respectively. These circuits are not alone; they are joined by the third circuit (*Public Service Corporation of New Jersey* v. *Securities and Exchange Commission,* 129 F. (2d) 899, certiorari denied, 317 U. S. 691), and by the court of appeals for the District of Columbia (*American Gas & Electric Co.* v. *Securities and Exchange Commission,* 134 F. (2d) 633, certiorari denied, 319 U. S. 763; *Koppers United Co.* v. *Securities and Exchange Commission,* 138 F. (2d) 577). The courts have uniformly sustained the Commission's understanding of the law.

Underlying these interpretations which assimilate latent power to the statutory standard of "controlling influence" is the realization of the practical consequence of latent power upon the behavior of those who may be aware of it. It is a matter of common experience in corporate affairs that power to control corporate action is seldom put to the ultimate test of a proxy fight, but is manifested through practical arrangements which reflect an appraisal of the possible outcome of a contest for control. Thus the daily policies

and management of a company are ordinarily shaped by an awareness of and consideration for the interests of a substantial stockholder who is in a position to contest for exclusive control with a reasonable prospect of success. For this very reason, a realistic application of the standard of "controlling influence" frequently presents troublesome fact questions, necessitating, as in this case, most thorough exploration of the historical relationships and interconnections between the companies in question, and between their respective officials, as a background for appraisal of the currently significant influences potentially affecting their conduct. The Commission has been acutely conscious of the congressional expectation that the phrase "controlling influence" would provide sufficient flexibility "to meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take." See S. Rep. No. 621, 74th Cong., 1st Sess., p. 23; H. Rep. No. 1318, 74th Cong., 1st Sess., p. 9.[20] The Commission has so interpreted and applied the phrase, and its inter-

[20] The quotation in the text from the Senate and House reports rebuts the implications which the petitioner seeks (Br., pp. 27–31) to draw from Senator Wheeler's statements in the course of the legislative debate, and from the Commission's brief in this Court in *Electric Bond & Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419. Viewed in their context, these are generalized statements, merely describing the broad outlines of the Act's coverage, and making no effort to deal with particular problems of application.

pretation, as that of the agency charged with the administration of the Act, is entitled to great weight. *Gray* v. *Powell*, 314 U. S. 402, 412.

Moreover, apart from the weight to be accorded to the Commission's views, the courts which have considered the section have expressed on their own behalf similar appreciation of the need for flexibility of approach. Judge Rutledge pointed out in *American Gas & Electric Co.* v. *Securities and Exchange Commission*, 134 F. (2d) 633, at 641–2 (App. D. C.), certiorari denied, 319 U. S. 763:

> As "control" may take many different forms, so may "controlling influence," and the statute is intended to cover any form or device, which may be "pursuant to an arrangement or understanding with one or more other persons." In clause (iii) Congress has enacted an extensible formula that can be applied to "meet the varied and subtle forms which corporate interrelationships have in the past and will in the future take." It is intended to provide a broad sphere for the Commission's determinations in order to carry out the policies of the Act as expressed in Section 1. [Footnotes omitted.]

The same thought is expressed in greater detail by Judge Hamilton in *Detroit Edison Co.* v. *Securities and Exchange Commission*, 119 F. (2d) 730 (C. C. A. 6), at 738–9:[n]

[n] Certiorari denied, 314 U. S. 618.

The present Act undertakes to bring within its ambit all subsidiaries subject to "controlling influence" of a parent. This phrase should be construed in the light of the purpose of the Act of which it is a part, and when understood in this setting and in the light of its ordinary signification, it means the act or process, or power of producing an effect which may be without apparent force or direct authority and is effective in checking or directing action, or exercising restraint or preventing free action. The phrase as here used, does not necessarily mean that those exercising controlling influence must be able to carry their point. A controlling influence may be effective without accomplishing its purpose fully.

Corporate wealth has become so widely distributed that control over it has tended to become more and more remote from ownership. Ownership of corporate shares without appreciable corporate control and control of corporate wealth without appreciable ownership has become a natural phenomenon of our economic system. Seven major types of corporate control were extant when the present Act was passed and others may develop from the urge of individuals to avoid public regulation. Congress recognized this condition, and the present Act imposes a wide discretion in the Commission in determining what is "controlling influence" of a parent over a subsidiary public utility. However, this part of the present Act has its guide

post, which prevents the Commission from exercising arbitrary power in enforcing it.

The types of control referred to are: (1) through complete ownership of capital stock, (2) a majority ownership, (3) through a legal device without majority ownership, such as pyramiding through holding companies or a large issue of non-voting stock with a comparatively small issue of stock with voting rights, or voting trusts, (4) minority control, which exists when comparatively few shares of corporate stock are in the hands of one group and the remainder widely scattered, (5) management control, which exists where all the stock is so widely distributed that no stockholder takes sufficient interest in the affairs of the corporation to influence or control it, (6) proxy control through committees, (7) through interlocking corporate officers or directors.

The evidence in the case at bar shows marked features and significant incidences of the latent power of the North American Company to exercise a controlling influence over the petitioner. Compare *Natural Gas Pipeline Company* v. *Slattery*, 302 U. S. 300, 307, 58 S. Ct. 199, 82 L. Ed. 276; *United States* v. *Union Pacific Railroad*, 226 U. S. 61, 96, 33 S. Ct. 53, 57 L. Ed. 124; *Southern Pacific Company* v. *Bogert*, 250 U. S. 483, 492, 39 S. Ct. 533, 63 L. Ed. 1099; *Hyams* v. *Calumet & Hecla Mining Company*, 6 Cir., 221 F. 529; *Moulton* v. *Field*, 179 F. 673; *Rochester Telephone Corpora-*

tion v. *United States and Federal Communications Commission*, 307 U. S. 125, 145, 59 S. Ct. 754, 83 L. Ed. 1147.

These views of the Commission and the courts do not exscind the word "controlling" from the operative significance of the phrase "controlling influence." Rather they give meaning to it, as a potent instrument for discovering, not "purely hypothetical future machinations" (Pet. Br., p. 39), but the realities of present power to control—whenever the interests of the dominant entity may dictate an effort to place that power in operation.

The petitioner stresses (Br., pp. 41, 42) the failure of the Commission to find as a fact that it "is presently subject to the controlling influence of North American." The Commission concededly made no such finding; but there was no reason why it should. The Commission found, expressly, "that North American has the power—if the occasion arises and if it so desires—to make its influence felt in a substantial and affirmative manner" (R. VI, 1922–1923).[22] Whether or not the influence thus found to exist was sufficient to be "controlling" is immaterial, so long as the Commission could on the basis of its finding ra-

[22] The Commission found it unnecessary to rely upon present exertion of influence, as to which, however, it said (R. VI, 1922):

> "There is evidence to justify a finding that even at the present time North American exerts a real influence in the affairs of PG&E, even though this influence is exerted in a negative way."

tionally reach its ultimate conclusion that the petitioner had failed to establish the absence of any existing "controlling influence" by North American over its management and policies. This ultimate conclusion which the Commission reached can be upset only if the Court can decide that the evidence so strongly demanded an affirmative finding of lack of controlling influence as to exclude any "rational basis" for the Commission's refusal to make such an affirmative finding. Unless the Court can so decide, the Commission's determination must stand (*Rochester Telephone Corp.* v. *United States,* 307 U. S. 125, 146); but in any event the question is one of fact, not of law.

2. *The Burden of Proof*

The petitioner does not question that it was required to establish that it was entitled to an affirmative finding by the Commission that it was not "subject to a controlling influence" by North American. But while the petitioner may be correct in emphasizing the difficulty of proving a negative, it goes far beyond the record here in its charge that the Commission imposed upon it a burden not merely difficult, but impossible. The Commission has not even demanded such a showing as has been sanctioned by the courts[22]; it has required no

[22] The courts, treating the matter in the context of a review proceeding, have held that the burden is a heavy one: "Subdivision (iii) calls for a showing of extreme negation. Its requirement is no less than that of preponderating

more than proof by a fair preponderance of the evidence that the condition prescribed by the Act has been met. It is the petitioner, not the Commission, which would attach to the Commission's use of the word "demonstrate" a requirement of proof "which excludes possibility of error" (Pet. Br., pp. 35–38). So far as the Commission is concerned, the word "demonstrate" has been used, in this as in other cases, interchangeably with such other words, in common usage synonymous, as "prove," "show," "establish," and "meet." A similar complaint drew the particular attention of the Circuit Court of Appeals for the Third Circuit in *Public Service Corporation of New Jersey* v. *Securities and Exchange Commission*, 129 F. (2d) 899, certiorari denied, 317 U. S. 691, and was answered thus (p. 902):

> Thus, upon examination of the Commission's fact findings and opinion we discover that in arriving at its conclusion the Commission did not rest its decision upon any

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proof * * *." *Hartford Gas Co.* v. *Securities and Exchange Commission*, 129 F. (2d) 794, 796 (C. C. A. 2). The petitioner comes before the Commission as a company falling squarely within the definition of a "subsidiary company" of a holding company, by virtue of North American's holdings of more than 10% of its outstanding voting securities; if it is to succeed in its demand for an order excluding it from the definition, it must do so by presenting evidence "of such a compelling character as to have required the Commission to find" the absence of a "controlling influence". *American Gas & Electric Co.* v. *Securities and Exchange Commission*, 134 F. (2d) 633, 640–641 (App. D. C.), certiorari denied, 319 U. S. 763.

> presumption arising from the ownership of 10% of voting stock of a utility company by a holding company but relied entirely upon evidence presented at the hearing before its trial examiner as to the effect of the stock ownership upon the relations of the three corporations. Again, although the Commission used the word "demonstrated" when referring to the burden which the Act places upon the applicant, there is no basis for concluding that the word was intended to connote "absolute certainty" as Public Service would have us find. Indeed, the only conclusion which can fairly be drawn from the Commission's opinion as a whole is that it proceeded upon the theory that the burden of proof which is imposed by the Act upon an applicant is to establish by a preponderance of the evidence that it is not controlled or subject to a controlling influence by a holding company. Such a conception of the burden of proof is entirely correct in the light of the express provisions of the Act, of ordinary rules of statutory construction and of generally accepted rules of evidence.

It is the petitioner too (Br., pp. 32–34), rather than the Commission, which would rest the Commission's holding upon a conclusive inference arising from North American's stockholdings. The Commission drew no such conclusive inference; it weighed the fact of stockholdings, as it weighed all other relevant facts. It properly gave much

weight, as evidence, to the fact that North American held by far the largest block of securities in P. G. & E., amounting to 32.89% of the common stock and 17.71% of the voting power, and that the next largest holder owned less than 2% of the voting securities, the balance being widely scattered.[24] Such consideration of not only the size of North American's holdings but also the relative size and distribution of other holdings of petitioner's stock, in the light of the historical facts of North American's position and influence as a stockholder, erects no irrebuttable presumption from the fact of 10% stock ownership.

In short, as with the petitioner's contentions regarding the meaning of "controlling influence",

[24] The power of a concentrated holding in the face of a management supported only by scattered interests is graphically illustrated by the history of The Detroit Edison Company since the events set forth in the Commission and court decisions cited, *supra*, pp. 35, 39. The Commission had held that Detroit Edison was a subsidiary of North American but was not a subsidiary of American Light and Traction Company, which, although holding 20.27% of its voting stock, had been unable to secure representation on the Board over the opposition of North American. Thereafter, North American's holdings of 19.28% in Detroit Edison were reduced to less than 1/10 of 1%, leaving Light and Traction as the dominant stockholder of that company, with the next largest holdings 4.2%, 2.3% and 1.2%. Light and Traction then designated two nominees for the Board of Directors of Detroit Edison, who were elected. Detroit Edison thereupon agreed that it was a subsidiary of Light and Traction, and withdrew its application to be declared not such a subsidiary, which application had been granted during the period when North American held its concentrated block.

we believe that its contentions as to the burden of proof are in reality no more than argumentative assertions of its ultimate contention that the Commission could not rationally draw the inferences which it did from the record. Succinctly stated, the premise of petitioner's case seems to be that if it could not meet the Commission's standards, no company could. That this premise is unsound is shown by the numerous cases in which the Commission has found the burden of proof to have been successfully carried.[25] The real question in the case is not the propriety of the Commission's standards, but the propriety of the inferences which it drew from the record. To that question—the factual aspect of the case—we now turn.

II

THE COMMISSION'S DETERMINATION WAS WARRANTED BY THE RECORD

Petitioner argues that the Commission's findings are not supported by substantial evidence. This argument does not go to the material evidentiary or basic facts; petitioner has not disputed any of the Commission's findings set forth in the statement above, at pp. 8–24. The controversy

[25] The cases prior to the Commission's decision in the instant case are collected in footnote 27 to the Commission's opinion, R. VI, 1928–9. The stockholdings involved ranged as high as 42% (*Panhandle Eastern Pipe Line Company*, 9 S. E. C. 370 (1941)).

rather revolves around the conclusions and inferences drawn by the Commission from the undisputed facts, and around the Commission's refusal to draw conclusions and inferences pressed by the petitioner. Such a controversy is to be judicially examined in the light of the rules generally applied under statutes which, like Section 24 (a) of the Holding Company Act, make administrative findings of fact conclusive if supported by substantial evidence. Under such a statute, even as to mixed questions of fact and law, "where the question is one of specific application of a broad statutory term in a proceeding in which the agency administering the statute must determine it initially, the reviewing court's function is limited." *National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 131. In such a case, the administrative agency's determination as to coverage "is to be accepted if it has 'warrant in the record' and a reasonable basis in law." *Ibid.* Nor is the administrator precluded from drawing an inference merely because the record might equally well have supported a contrary or inconsistent inference. "The possibility of drawing either of two inconsistent inferences from the evidence did not prevent the Board from drawing one of them." *National Labor Relations Board* v. *Nevada Copper Co.,* 316 U. S. 105, 106. Cf. *National Labor Relations Board* v. *Waterman Steamship Co.,* 309 U. S. 206, 226. Nor is the standard

of review any different because the basic facts may be undisputed. *United States* v. *Louisville & Nashville R. R. Co.*, 235 U. S. 314, 320; *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n*, 273 U. S. 52, 63.

In this case the record established that North American's holdings of P. G. & E.'s voting securities were by far the largest, all other holdings in such securities being small and widely scattered. Merely by withholding its votes North American could have prevented the conduct of business at any meeting of P. G. & E.'s stockholders held since 1932. Its holdings are sufficient to block any substantial reorganization of the company or its security structure. North American is a giant holding company engaged in the public utility business, with an organization well versed in all matters relating to the utility industry. As to financial matters its advice was sought when needed by the responsible officials of P. G. & E. Furthermore, North American's investment in P. G. & E. represented a substantial part of North American's own portfolio and was carried on North American's books at $63,000,000. The dividends received from P. G. & E. constituted from 20% to 25% of North American's entire corporate income. Over this vital investment North American kept a close scrutiny. Representatives of North American sat on P. G. & E.'s Board of Directors, and one of its former trusted executives

became P. G. & E's president. North American secured frequent and detailed reports concerning P. G. & E.'s business, in greater detail than those received by other members of the Board of Directors or even by the Executive Committee of that Board. Throughout the period of their relationship but one inconclusive instance was adduced in which P. G. & E.'s conduct failed wholly to satisfy North American.

The petitioner's case in substance consisted merely of testimony by its officials that the results which normally flow from such consequential holdings did not in this instance exist. The Commission found the petitioner's showing insufficient, and determined that it could not make the requested finding that petitioner's management and policies were not subject to a controlling influence by North American. That there was adequate justification for the Commission's action will appear from a more detailed examination of the facts in the record.

(1) The first and most important single fact which the record established is the distribution of security holdings. North American owns 32.89% of P. G. & E.'s common stock and 17.71% of its outstanding voting securities (R. I, 74–5; *supra,* pp. 9–10). Moreover, almost half of the voting power is in the preferred stockholders, who, because of the nature of their investment interest, are in favorable times less likely than common

stockholders to take an interest in control. This circumstance makes North American holdings of a third of the common stock of even greater strategic significance than would be indicated by the percentage of the outstanding voting securities which it holds.

The next largest stockholder owns shares giving it less than one-tenth as much voting power (R. I, 75). There are only four holdings of as much as 100,000 shares, compared with the more than 2,000,000 shares held by North American. The remainder of the stock is widely distributed in small units, among more than 95,000 stockholders (R. I, 74–75; VI, 1897–8; Pet. Ex. 20, 21 and 29; *supra*, p. 10). All the local directors together own less than 100,000 shares. There is no stockholder or present coalition of stockholders which in any way approaches North American's holdings. From ownership such as North American's, controlling influence usually follows. In the words of Judge Learned Hand, concurring, in *Morgan Stanley & Co.* v. *Securities and Exchange Commission*, 126 F. (2d) 325, 333 (C. C. A. 2), "quite aside from any implications from the statutory definition of 'subsidiary', § 2 (a) (8), I think we can take judicial notice of the fact that the ownership of twenty per cent of the voting power of a company makes the owner 'liable' to have practical control."

To offset these concentrated holdings petitioner relies only on the contention that the combined holdings of the local directors, their families, and the institutions which they represent, amount to some 800,000 shares, and upon the further possibility of rallying to their support the scattered holdings of over 58,000 shareholders residing in the territory (Br., pp. 62, 82). If they were successful in obtaining proxies from 100% of the California holders, they would still control less than 50% of the total voting securities (R. VI, 1898). Moreover, as the Commission pointed out, there is no basis in fact for assuming that there would be no cleavage among the local directors, or that issues would necessarily be sharply drawn between North American and a compact local group.[28] As businessmen having important local business interests, the local directors cannot be insensitive to the enormous amount of business patronage available to an $800,000,000 enterprise like P. G. & E. Rivalries as to the distribution of such patronage may be expected to have their effect upon the unanimity of local directors. An instance in the record where a difference of opinion did develop among the local directors as to distribution of business patronage related to the selection of a leading underwriter in connec-

[28] See R. VI, 1924, n. 24. "We think that applicant's assumption that the local management would constitute a unanimous bloc on the same side of any conflict is of doubtful validity."

tion with financing by petitioner. This incident is summarized in the Commission's opinion (R. VI, 1905–1907).[27] The very fact that North American and its representatives do not appear to have any interest in the distribution of petitioner's local business patronage would tend to strengthen its position should it display any interest in the allocation of such of petitioner's business as could not be handled by California firms.[28]

(2) The persons who were directors of P. G. & E. prior to North American's acquisition of its interest in the company understood the

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[27] Hockenbeamer desired, in part for reasons of personal friendship, to place the business with Lazard Freres, while several of the other local directors favored Blyth & Co., and in that connection it appeared that Chickering, one of the P. G. & E. directors, had been counsel for Blyth & Co. for some twenty-five years (R. II, 801; III, 1398) and that C. O. G. Miller, another director, had a son-in-law who was a partner of Blyth & Co., as well as two very close friends who were also partners there (R. II, 647, 653–4). The entire story of this jockeying for position as leading underwriter appears most revealingly in the testimony of Charles R. Blyth (R. III, 1381–1411), C. O. G. Miller (R. II, 643–660), and Black (R. III, 1091–8, 1240–91). This difference between the local directors of P. G. & E. was one in which Black, while still with North American, participated. Black at that time expressed a sympathy for Blyth & Co.'s claims, and when he later became president awarded the leading position to them. And during the period while the question of allocation of petitioner's underwriting business was under consideration, the interested bankers felt it worth while to press their claims upon North American's officials, including Black, Fogarty and Williams (R. III, 1391–1400).

[28] For the bearing of such dispute upon the public policy of the Act, see p. 73, *infra*.

power which North American's acquisition would give it. They were apprehensive as to the extent of the influence North American would wield in their company by reason of its concentrated holdings (R. II, 735, 778–9; *supra*, pp. 11–14). They asked that North American agree in advance not to use its influence to dominate or interfere with the management of the company. They wanted a written assurance and an irrevocable proxy from North American (R. II, 620–1, 735, 778–9). However, North American refused, and the old P. G. & E. management had to be satisfied with an informal agreement without any time limit (Pet. Ex. 43A; R. I, 226–7, 257–9; II, 620–1, 735–6, 778–9, 831–2; III, 1059–1062, 1123, 1127–1130). North American's attitude was that so long as P. G. & E. was operating satisfactorily "the situation did not seem to require any more attention," but that should it develop that the management was acting improperly or incompetently, it would intervene (R. IV, 1545–8). A possibility so real and vital to directors of P. G. & E. at the time North American came into the picture was hardly evidence to be disregarded by the Commission.

(3) So long as North American is satisfied with the present management, North American's voting power and the proxy machinery in the hands of the management make it virtually impossible for any other interest or group of interests to elect a majority of the directors (R. VI, 1924).

(4) Since 1932 (until April 9, 1940), North American's votes have represented 27% to 30% of the total votes cast at stockholders' meetings and, by virtue of its stockholdings, North American had the power to break a quorum at all of the stockholders' meetings during that period (R. VI, 1898–9, 1924–5; *supra*, pp. 22–23). If it had chosen to do so, no business could have been transacted at such meetings (R. VI, 1924). That "a quorum could have probably been obtained (without the representation of North American) by sending out an additional notice" (Pet. Br., p. 62) is possible, but scarcely conclusive.

(5) The ownership of virtually one-third of petitioner's common stock gives North American an effective veto power over vitally important organic forms of corporate action."[29] For instance, the Board of Directors cannot be reduced to less than five without the consent of the holders of more than 80% of the voting shares; a merger or consolidation must be approved by the holders of not less than two-thirds of each class of stock; the voting rights of any class of stock cannot be diminished without the consent of the holders of two-thirds of the shares of that class; the dividend rate or redemption price or priority on liquidation, etc., of the preferred cannot be increased without the consent of the holders of a majority of the common shares.

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[29] See Deering's Civil Code of California (1937), Div. I, Pt. IV, Tit. I, Ch. XIII.

(6) Against the background of the other facts we have discussed, the Commission found to be of material significance the fact that North American has been given the "right" to three representatives on petitioner's Board of Directors and one representative on its Executive Committee (R. VI, 1925).[30] None of P. G. & E.'s other large stockholders is represented on its Board (R. VI, 1901).[31]

(7) The Commission also regarded as significant the fact that frequent and detailed reports of every phase of petitioner's operations were sent

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[30] Fogarty's testimony in this respect is highly illuminating. He testified (R. IV, 1562–3; VI, 1925–6):

> Q. If your holdings were considerably smaller, it is very possible that you would not be entitled to two members or three representatives on the applicant's Board. You might not even have any representation on the applicant's Board, that is true, is it not?
>
> A. Yes, that is true.
>
> Q. Then, in that sense, at any rate, you would not be in a position to exercise the controlling influence over applicant's affairs that you can exercise in view of the fact that you have very large holdings.
>
> A. The difference is that the officer of the North American Company being a director of the Pacific Gas & Electric Company has a voice in its affairs as a director, whereas a small stockholder, not being a director, would not be in that position, and naturally the affairs of the company being managed by the Board and two officers of the North American Company being directors and participating in that capacity as directors, are in a different position from a small stockholder who is not a director.

[31] See note 11, *supra*.

by P. G. & E. to North American. No such reports are sent to any other stockholder. (R. VI, 1925–6; *supra*, pp. 17–19).

(8) Ever since Black became petitioner's president he has called Fogarty, chairman of North American's executive and finance committees, a number of times each year to seek advice concerning petitioner's financial affairs, and Hockenbeamer, when president of P. G. & E., had frequently sought advice of Black, who was then vice president of North American (*supra*, pp. 19–20). As Judge Rutledge said in the *American Gas & Electric Company case* (134 F. (2d) at 642): "Under some circumstances 'controlling influence may spring as readily from advice constantly sought as from command arbitrarily imposed.' Manchester Gas Co., 1940, 7 S. E. C. 57, 62."

(9) North American's latent power over P. G. & E. is also evidenced by the situation with respect to Black. The petitioner complains that the Commission over-emphasizes Black, referring to him by name in its opinion more than 60 times (Pet. Br., pp. 92–93, note). But, as the Commission stated in its opinion (R. VI, 1926–7), it could not—

> disregard the fact that applicant's most important executive officer, Black, its president, was, for eight years just prior to his appointment, a senior executive of North American. From February 1927 to June 1930 Black's primary duty as vice presi-

dent of North American was to exercise holding company supervision over the activities of the subsidiaries of Western Power Corporation. He conducted the negotiations for North American in which Western Power was transferred to PG&E and as a result of which North American acquired its interest in PG&E. For five years, from 1930 to 1935, Black was the individual in the North American organization who, more than any other one person, kept advised as to applicant's business and followed applicant's affairs in the light of North American's interest. It is also significant that since Black became president of PG&E, no effort has been made by North American to have representation on the executive committee, and no one in North American's management has followed applicant's affairs as closely as he did. It is wholly unreal to suppose that Black would be uninfluenced by these circumstances and, in his dealings with North American, would treat it as merely a large stockholder of PG&E.

(10) The Commission also attached significance to the fact that, although the record in this case covers the entire history of the relationship of P. G. & E. and North American, the only evidence offered by petitioner to show an affirmative conflict between it and North American was the testimony to the effect that P. G. & E.'s Board failed to comply with a request by North Ameri-

can's president and by Black to reconsider the dividend reduction in 1933. The request was mild in terms, and when it was refused North American did not regard the matter as of sufficient importance to call for any further attempt to obtain reconsideration."[21]

(11) Petitioner urged and the Commission found (R. VI, 1920) that the record reveals no instance in which North American has affirmatively interfered with or directed petitioner's management or policies. But the record clearly sustains the Commission's conclusion that this lack of interference was not due to an inability to influence petitioner's policies, but rather to North American's complete satisfaction with the manner in which petitioner's affairs were being conducted (R. IV, 1545–8, 1642–3; *supra,* p. 24).

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[21] C. O. G. Miller, a member of petitioner's Executive Committee and one of its most influential local directors, shared North American's view that the dividend should not have been reduced, but testified (R. II, 640):

> "After the dividend had been reduced I think I made no special effort to restore it. The mistake was made, I think, in reducing it. After the dividend had been reduced, once you have done the damage, you might as well go along until everybody is satisfied."

In the fall of 1936 the old dividend was restored on the recommendation of Black, who had meanwhile become president. Black testified that the earnings justified the restoration and that North American had not requested the action. *Supra,* pp 20–21.

Thus, Freeman testified that North American's interest in P. G. & E. was best served by the latter being regarded as a California company,[33] and Fogarty testified that North American's present inactivity in the affairs of P. G. & E. is due primarily to the fact that petitioner's business has enjoyed a normal growth and has progressed in a satisfactory manner. However,

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[33] Freeman, one of the North American representatives on P. G. & E.'s Board, testified (R. IV, 1642–3):

> Q. Well, why does the North American Company deem it advisable, if such it does, to not exercise the same supervision over the affairs of the applicant as is exercised over the affairs of its subsidiaries?
>
> A. In the first place, the Pacific Gas & Electric Company has always been regarded as peculiarly a California company, and our desire has been to see them have as strong and representative a local Board as they possibly could have. It would not be practicable to induce representative men to serve on a Board of that kind if they thought their actions were going to be subject in any way to the direction or veto of a company three thousand miles away. It would affect their public relations. *It is a situation in which our interest in the company is best served by that company being regarded as a California company, under California management.*
>
> Q. Then, would you say that your failure to exercise control of the applicant, or controlling influence over its management and policies, was due entirely to a feeling on the part of the North American Company that such a control or controlling influence was not desirable, or not to the best interests of it?
>
> A. I would say that it was not desirable from the viewpoint that it would not be to our best interests as stockholders. [Emphasis supplied.]

Fogarty indicated that if conditions changed, so would North American's attitude."

"Fogarty, North American's other representative on P. G. & E.'s Board, testified (R. IV, 1545–6, 1548):

Q. Would you say that the relationship which you have stated has existed between the North American Company and the applicant in the past was due primarily to the fact that applicant's business has enjoyed a normal growth and has progressed in a satisfactory manner?

A. Yes.

Q. You would not say, would you, Mr. Fogarty, that North American would not take a more active part in the affairs of the applicant in which it has an investment representing the market value of approximately $60-odd million, if conditions changed in such a manner that earnings were materially decreased and its ability to pay dividends on its common stock seriously threatened?

A. I don't think a drop in earnings of the Pacific Gas and Electric Company, or a change in its dividends, would be warrant for taking any active part in its management. If some conditions were to develop which were the result of improper or incompetent management, it would be an entirely different situation.

* * * * *

Q. If a situation arose in the affairs of the applicant which led you to the conclusion that the applicant would be benefited by the North American Company exerting a controlling influence over its affairs, would you take such steps as in your opinion were necessary to result in the exercise of such controlling influence?

A. Well, we would submit those views to the management and directors, and whether or not any action that would be based on those views would be taken would depend entirely upon the acquiescence and support of the management and directors of the company.

Q. But if the managers and directors of the company differed—if there arose a sharp difference of opinion between you and the management and directors on a par-

Apart from the fact that it was in the interest of good "public relations" (R. IV, 1642; VI, 1922) for petitioner to be regarded as a local company, it should be noted that the whole period since November of 1935, when Black became president, is the period since the passage of the Public Utility Holding Company Act. Presumably neither the petitioner nor North American would deny that throughout the period they have been interested in avoiding having petitioner placed in the legal status of a subsidiary. This fact is in itself sufficient to justify a certain amount of skepticism in considering North American's studied avoidance of unnecessary participation in the formal deliberations of petitioner's management—an avoidance all the more conspicuous in light of the great importance to North American of its investment in petitioner.[35] And even regarding the non-interference without skepticism, it is of no great importance. It does not establish the absence of latent power in North American to exert a controlling influence if its interests

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ticular matter, what steps would you take to oust the management?

A. I don't know that under those circumstances we could take steps to oust the management. But whatever action we would take would depend upon the circumstances that gave rise to that. It is extremely difficult to answer such a hypothetical question.

[35] As noted above (p. 9), North American's investment is carried on its books at approximately $63,000,000, and the dividend income therefrom represents from 20% to 25% of its entire corporate income.

should so dictate. It shows no more than that while affairs have been progressing favorably North American has been and still is willing to support petitioner's local management, part of which it had itself trained.

(12) What happened at the time when P. G. & E. acquired North American's subsidiaries and North American in return obtained its interest in P. G. & E. is a story commonplace in corporate history—an amalgamation of two corporations each with its own controlling group. One of the directors of the company referred to the arrangement as a marriage (R. II, 626–627). The marriage in this case was between a management-controlled company (the old P. G. & E.) and a stockholder-controlled company (the subsidiaries of North American). In such cases there are two powerful influences in the amalgamated enterprise: (1) the management group which has control of the proxy machinery, and (2) the new group which has substantial stockholdings. Sometimes there are conflicts between the two groups and one or the other triumphs.

More frequently there is no conflict, but agreement, between the two groups. An arrangement is arrived at, usually before the amalgamation is consummated, under which each party understands and respects the powers and influence of the other, as well as its own. These arrangements are gen-

erally of indefinite duration, alterable whenever either group feels that a changed equilibrium of forces (including greater or less willingness on one side or the other to enter into a contest for exclusive control) entitles it to a greater degree of influence. Until that happens, control is in effect jointly exercised, by agreement between the two influential groups, to the exclusion of the vast body of security holders.

This is precisely the situation in the P. G. & E. case. The management, in so far as it may be regarded as a group separate from North American, has control of the proxy machinery and presumably could attract substantial support from local security holders in California who represent only a little less than a majority of the voting security holders in the company. North American, with its concentrated security holdings and its vast prestige, efficient organization, and powerful financial connections, likewise is in a position to attract a substantial group of security holders and perhaps to wrest exclusive control. However, it is idle to speculate whether in a contest one group or the other would emerge victorious. It is sufficient that North American would be a formidable opponent with a substantial likelihood of success in any such contest.[36] This fact alone is an indi-

[36] If a proxy contest ever developed, North American would have a tremendous head start because of its holdings of 2,059,670 shares, with no other person owning more than 200,420. The local directors, if they banded together, own only 78,024

cation of the power of North American and an explanation of why it is to the advantage of the management of P. G. & E. to permit North American to share in the control of the company without putting it to the ultimate test.

This arrangement as to the relative positions of North American and the local directors has worked well for both parties. To the local interests in the management the arrangement has given security. They have been permitted to run the business assured that so long as North American is satisfied it is virtually impossible for any other interest or interests to remove them from the Board of Directors. On the other hand, the local management knows that North American keeps a close scrutiny over every phase of its business and

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shares; even if they could each vote all stock which they represent as fiduciaries or otherwise, they would start the contest with less than 800,000 shares.

Since the preferred stockholders of P. G. & E. have had an uninterrupted record of receiving their fixed preferential dividends, which are currently being earned by a substantial margin, they are far less likely than common stockholders to evidence an interest in managerial problems. For that reason the concentration of North American's holdings in the common stock and its 32.89% interest in that stock are particularly significant in considering a possible contest over control. In appealing for the support of fellow stockholders North American would have the advantage of being able to point to many years of experience in the public utility field, to the close study given by its officers to petitioner's affairs, and also to its own tremendous stake in the earnings of petitioner.

that North American is in a position, by reason of its stockholdings, to veto any special action requiring the vote of two-thirds of the outstanding stock. Since the inception of the arrangement P. G. & E. could have conducted no business at any of its stockholders' meetings without the approval and votes of North American.

This background provides to the local management of P. G. & E. every incentive to insure that its actions shall be satisfactory to North American and shall not displease that company. Not only is its every transaction of any significance revealed in reports to North American and its directors, but the advice of the North American representatives has been frequently sought, at least on financial matters, originally by Hockenbeamer, president of the company, and later by his successor, Black, himself a North American man appointed to the presidency of P. G. & E. as a result of his contact with the directors of that company as the representative of North American in charge of P. G. & E. matters.

So satisfactory has been the response of the directors of P. G. & E. to the realities of the situation that North American has had no occasion to exercise overtly any of its powers over the management.

The Commission deals with the question of control not only under the Public Utility Holding Company Act but also under the other statutes

which it administers."[27] The analysis made above is one which accords with the ordinary experience of the Commission in its dealing under these various statutes. The petitioner, as we have seen, has brought no evidence not thoroughly consistent with the picture thus presented. In the face of the insubstantial character of the opposing testimony, it seems plain that the Commission was entitled to analyze the situation as it did, and that it did not act without rational basis when it refused to believe that the facts in the record established that P. G. & E. was not subject to a controlling influence by North American.

(13) The final question before the Commission was whether the petitioner had shown that, even if its management or policies are subject to a controlling influence by North American, nevertheless it is not "necessary or appropriate in the public interest or for the protection of investors or consumers" that it be subject to the obligations, duties, and liabilities imposed by the Act on subsidiary companies of holding companies. In

[27] For instance, the existence or non-existence of a control relationship is often involved in determining whether registration is required under the Securities Act of 1933; in deciding whether adequate disclosure has been made in registration statements under that Act and in applications for registration, annual reports and proxy solicitations under the Securities Exchange Act of 1934; in qualification of indenture trustees under the Trust Indenture Act of 1939; and in the administration of numerous regulatory provisions of the Investment Company Act of 1940.

reaching the conclusion that petitioner had not sustained its burden of proof in this respect, the Commission used as a guide the views of the court in *Detroit Edison Co.* v. *Securities and Exchange Commission,* 119 F. (2d) 730, 739–740 (C. C. A. 6), where the court, in discussing the significance of the quoted phrase in Section 2 (a) (8), said:

> The phrase "public interest" as used means that the public has some pecuniary interest or an interest by which legal rights or liabilities of its individual members are affected by the operation of the utility. The phrase is not to be construed as requiring the Commission to find that the conduct of the applicant's business has or will affect the public adversely. The statute contemplates action prospectively. It is a preventive measure intended to regulate action before the interests of those concerned are adversely affected. The prime factors in determining statutory exemption are the size and extent of the company involved, the inter-company relationship, the distribution of its securities and the opportunity presented because of the relationship between the parent and subsidiary for excessive charges for services, construction work, equipment and materials, and the transactions entered into in which evil may result, because of the absence of arms' length bargaining or restraint of free and independent competition.

The Commission adverted to the undisputed facts that petitioner "is a company with stated assets of almost $800,000,000, serving in excess of 1,500,000 customers; its securities are listed and traded on national securities exchanges and are owned by investors throughout the country" (R. VI, 1929). The size of the petitioner, the large number of its customers and the nationwide trading in and distribution of its securities obviously make applicable the finding of Congress in Section 1 (a) of the Act that public utility holding companies and their subsidiary companies are affected with a "national public interest in that, among other things, (1) their securities are widely marketed and distributed by means of the mails and instrumentalities of interstate commerce and are sold to a large number of investors in different States." These facts likewise make applicable to petitioner the finding of Congress, in Section 1 (b) of the Act, that "the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates, and the interest of consumers" are or may be adversely affected when certain enumerated conditions exist.

We do not contend that the record justified a finding that the more spectacular of the evils enumerated have actually existed in the relationship of petitioner and North American. The Commission emphasized in its opinion (R. VI,

1930) that its decision should not be taken to indicate "that the influence of North American necessarily is or will be improperly exercised." But the Act speaks not only of evils actually existing, but of interests of investors which "are or may be" adversely affected. Section 1 (c) declares it to be the policy of the Act to "eliminate the evils" enumerated in Section 1. In short, the Act is preventive, not punitive, in nature.

Moreover, in view of the size of petitioner, the existence of the relationship of holding company and subsidiary between it and North American in itself exemplifies a concentration of control which is one of the major evils found to exist, namely, "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties" (Section 1 (b) (4)). The Report of the National Power Policy Committee on Public-Utility Holding Companies (S. Rep. No. 621, 74th Cong., 1st Sess. (May 13, 1935), Appendix) stresses the evils of unnecessarily expanded monopoly resulting from the "concentration of control in the electric and gas industries through the device of the holding company" which it found "has assumed tremendous proportions." As to this the Report states:

> "Numerous studies have already shown, and the report of the Federal Trade Commission further demonstrates, that the con-

centration of control in the electric and gas industries through the device of the holding company has assumed tremendous proportions. While the distribution of gas or electricity in any given community is tolerated as a "natural Monopoly" to avoid local duplication of plants, there is no justification for an extension of that idea of local monopoly to embrace the common control, by a few powerful interests, of utility plants scattered over many States and totally unconnected in operation. Such intensification of economic power beyond the point of proved economies not only is susceptible of grave abuse but is a form of private socialism inimical to the functioning of democratic institutions and the welfare of a free people.[28]

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[28] Similar thoughts were expressed by the President in his message of March 12, 1935, transmitting to the Congress the Report of the National Power Policy Committee:

> In its destruction of local control and its substitution of absentee management, it has built up in the public-utility field what has justly been called a system of private socialism which is inimical to the welfare of a free people.
>
> Most of us agree that we should take the control and the benefits of the essentially local operating utility industry out of a few financial centers and give back that control and those benefits to the localities which produce the business and create the wealth. We can properly favor economically independent business, which stands on its own feet and diffuses power and responsibility among the many, and frowns upon those holding companies which, through interlocking directorates and

Under the regulatory provisions of the Act this problem is dealt with, *inter alia,* by the provisions which authorize the Commission to impose conditions in connection with security issues of subsidiary companies (Section 6 (b)) and to require the "maintenance of competitive conditions" in many types of transactions (Sections 12 (d), 12 (f), 12 (g), 13 (c), 13 (e) and 13 (f)). The principal exercise of such regulatory jurisdiction by the Commission has been under its rule (U–50; 17 C. F. R., 1941 Supp., 250.50) requiring competitive bidding for security issues. Indeed, if we accept petitioner's protestations that there are unlikely to be any transactions on its part which might contravene other regulatory provisions of the Act, then the one important consequence of subjecting petitioner to the obligations of a subsidiary company would be to render its

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other devices, have given tyrannical power and exclusive opportunity to a favored few. It is time to make an effort to reverse that process of the concentration of power which has made most American citizens, once traditionally independent owners of their own businesses, helplessly dependent for their daily bread upon the favor of a very few, who, by devices such as holding companies, have taken for themselves unwarranted economic power. I am against private socialism of concentrated private power as thoroughly as I am against governmental socialism. The one is equally as dangerous as the other; and destruction of private socialism is utterly essential to avoid governmental socialism.

future issues subject to the requirement of competitive bidding.[39]

When the Commission has been unable to find that the management and policies of one company are not subject to the controlling influence of another holding more than 10% of its stock, and where the companies involved are of such size that their financing and other transactions in interstate commerce may affect the national economy in the manner recited in the Act, it becomes a question primarily for administrative determination whether it is in the public interest to subject the subsidiary company to regulation under the Act. In this case there is no dispute as to the factual importance of petitioner's size and financing to the national economy. The only question is that of resulting public interest. The Commission's conclusion with reference thereto is clearly within its administrative competence, and neither arbitrary nor capricious, and as such, we submit, must be allowed to stand.

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[39] During the period subsequent to the Commission's order in the case petitioner has issued some $141,375,000 principal amount of securities which were registered with the Commission under the Securities Act of 1933; however, in reliance on the "stay" granted by the court below (see note 5, *supra*) these were not submitted to regulation under the Holding Company Act. The leading underwriter for such securities was in each instance Blyth & Co., the firm which had emerged as the successful contender for that position under the circumstances referred to at p. 53, *supra*.

III

THE COURT BELOW PROPERLY AFFIRMED THE COMMISSION'S ORDER UPON AN EQUAL DIVISION OF THE JUDGES PARTICIPATION IN THE DECISION

The petitioner contends that it was error for the court below to affirm the order of the Commission by an equal division (Pet. Br., pp. 97-100). Although it is not entirely clear from the petitioner's brief exactly how it would have this alleged error remedied by this Court, it appears from the petition for the writ (p. 33) that the petitioner's proposal is that the Court should remand the case to the court below for further consideration when the existing vacancy in that court shall be filled (which we understand has very recently occurred). The petitioner's position is persuasive neither as to the law involved nor as to practical considerations.

1. As we understand petitioner's argument, it is that the review proceeding in the circuit courts of appeals under Section 24 (a) of the Act is in the nature of an original determination of a justiciable controversy, which must be decided for or against the petitioner by a majority of the court. Petitioner concedes (Pet. Br., p. 100) that it is proper for an equally divided appellate court to affirm a judicial decision, but urges a distinction with regard to decisions of an administrative tribunal. To support the argument, cases are cited which either involve the entry of a judgment in the first instance (*In re First Congressional*

District Election, 295 Pa. 1, 144 Atl. 735 (1928)), or depend upon a statute which requires a majority of the judges of the court to issue any order, judgment or decree (*Deglow* v. *Kruse*, 57 Ohio St. 434, 49 N. E. 477 (1898); *In re Kings Co. Elevated R. R. Co.*, 78 N. Y. 383 (1879)). These cases are clearly irrelevant.

Under the provisions of Section 2 (a) (8) here involved—as distinguished from other types of statutes, and indeed from certain other orders of the Commission under the Holding Company Act [10]—the orders of the Commission are self-operative. The petitioner was subject to the Act as a subsidiary of North American by force of the statute itself, and could be relieved of its responsibilities as such only on a Commission finding that it was "not subject to a controlling influence" by North American. The Commission's refusal to make such a finding left the statute operative as to petitioner unless the Commission's determination should be set aside on review.[11]

"Affirmance" by the reviewing court thus has in such a case as this no greater or different effect

[10] It is unnecessary for present purposes to consider the effect of an equally divided reviewing court upon orders of the Commission under other provisions of the Act, or the possibly different problem which might be presented under such statutes as the original Federal Trade Commission Act or the National Labor Relations Act, where sanctions for the administrative order are dependent upon a judicial decree of enforcement.

[11] For proceedings with respect to the *ex parte* "stay" of the Commission's order entered by the court below, see note 5, *supra*.

than a failure to set aside or a dismissal of a petition to review.[42] In the review proceeding the burden is on the petitioner to establish his case, both because of his position as applicant for an exception under the statute and because of the weight given to an administrative determination.[43] If the judges of the reviewing court divide equally, the Commission's order cannot be set aside, for petitioner has not satisfied this burden. The situation is comparable to that of a single judge who finds the considerations in a case evenly balanced; he then decides against the party required to make an affirmative showing. Thus even if the case is not governed by the well-established rule applicable to appellate review of the decisions of a lower court, the result is necessarily the same. It should be noted that there is no indication of dissent below from the conclusion that an equal division among the judges as to the merits should result in affirmance of the Commission's order (R. V, 1776).

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[42] In *Detroit Edison Co.* v. *Securities and Exchange Commission*, 119 F. (2d) 730, 740 (C. C. A. 6), certiorari denied, 314 U. S. 618, the action of the circuit court of appeals sustaining the Commission's order took the form of merely denying the petition to review.

[43] This is true as to conclusions of law as well as findings of fact; the weight which this Court has ascribed to the former (*St. Joseph Stock Yards Co.* v. *United States*, 298 U. S. 38, 53; *United States* v. *American Trucking Associations, Inc.*, 310 U. S. 534, 549) should prevent a court from setting them aside if it thought the considerations evenly balanced.

2. If the petitioner's proposal is that this Court should as a matter of discretion remand the case to the court below for further consideration, such a proposal should, we submit, be rejected as impractical. A similar contention was made to the court below as a ground for granting a second reargument, and on consideration was rejected. The exercise of its discretion by the lower court in determining not to grant a second rehearing is clearly not subject to reexamination by this Court except for abuse of discretion. In the light of the extended period during which this case has been pending,[44] no abuse can be claimed in putting an end to further prolongation of the litigation. See the discussion in *Brown v. Aspden's Adm'rs.*, 14 How. 25, 27–28.[45]

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[44] The petition to review was filed September 18, 1941 (R. V, 1671, 1695), and the second petition for rehearing was denied on February 23, 1944 (R. V, 1777). During this period and to the present time, the petitioner has not subjected itself to regulation under the Act because of the *ex parte* "stay" granted by the court below. See note 5, *supra*.

[45] Chief Justice Taney, speaking for a unanimous Court, denied rehearing on an earlier order of affirmance entered upon an equal division of the Justices. He said in part (p. 28):

> "And if it is to be understood, that cases of this description are not to be finally decided without the concurrence of a majority of the whole bench, it would be an useless consumption of time to hear them in the absence of any one judge, because it would be uncertain whether a judgment could follow after the argument. And it is easy to foresee the inconvenience, delay, and expenses to which a practice of that kind would subject the parties, and the uncertainty and confusion it would produce (to the great injury of other suitors) in the order of business as it stands on the docket of the court."

In addition, the case is now before this Court on certiorari, all of the substantial issues raised below are now being fully presented to this Court, and it would seem entirely fitting that under these circumstances this Court should finally decide the questions at issue. To remand would result only in delay.

CONCLUSION

We respectfully submit that the refusal of the Commission to render the finding requested by the petitioner was based upon evidence and inferences which had warrant in the record and a reasonable basis in law; that the court below properly affirmed the order of the Commission; and that the judgment of that court should in turn be now affirmed.

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No. 55

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CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1944

PACIFIC GAS & ELECTRIC COMPANY, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Petition for Rehearing

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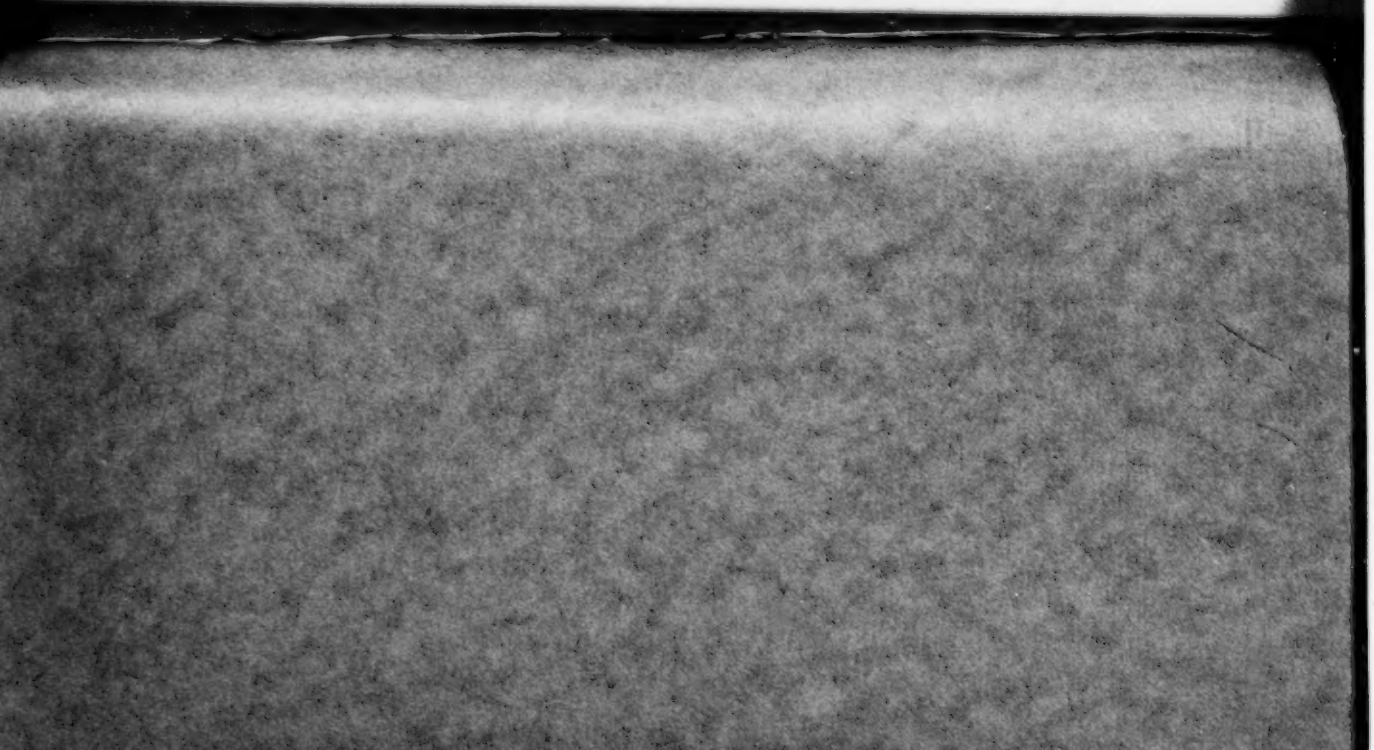

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In the Supreme Court of the United States

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SECURITIES AND EXCHANGE COMMISSION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

Petition for Rehearing

To the Chief Justice and Associate Justices of the Supreme Court:

It is respectfully requested that a rehearing be granted of the order of this Court affirming the judgment of the court below by an equal division.

Here the Court has for the first time permitted the decision of an administrative body to stand, simply because no court has been able to decide whether the decision was within or without that body's granted powers. The action of this Court, coupled with the fact that the court of original jurisdiction was also equally divided, has the result, if a rehearing be not

granted, of investing the decision of the Commission with a finality that Congress expressly denied when it provided that orders of the Commission were to be subject to judicial review.[1]

The result is even more striking when it is realized that the Commission did not find that Petitioner was within the area of federal regulation as laid down by the Act, but merely that it had not "demonstrated" that it was without such area.

It is reasonable to believe that but for the provisions for judicial review the Act would not have been passed (79 Cong. Rec., 8390, 8395, 8400). They were put forward with primary emphasis in support of the Act's validity when it came before this Court in the *Electric Bond and Share* case, 303 U.S. 419.

We submit that the judicial review thus provided for has not been accorded. Although in form the judgment is an affirmance, it is in substance, as was the judgment of the court below, an announcement that the Court cannot act, and that the request for judicial review of the Commission's order is therefore dismissed. *Durant v. Essex,* 7 Wall. 107, 112.

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[1]The United States Law Week in its issue of March 13, 1945, commented on this Court's order as follows:

"A review of federal administrative law does not indicate any other instance in which an order of a federal administrative agency was upheld by action similar to that had in this case."

A Rehearing Will Permit a Decision on the Merits, or Other Disposition in the Public Interest.

Because the judicial review intended by the Act has not been given, because the effect of the court's action in affirming the Commission's order will make it *res judicata* against Petitioner and because of the public importance of the questions presented, it is submitted that this Court should make every effort to see that the cause is disposed of on the merits.

The indispensable step toward this result is the granting of a rehearing. If this is done the following results, all in the interest of justice, are possible: (1) On reargument, the Court may find itself able to agree; (2) If unable to agree, written opinions stating the area of agreement, will be valuable as a guide to all those affected by the Act and especially in connection with further proceedings by Petitioner before the Commission; (3) The cause can be remanded to the Commission for further proceedings in the light of the changed circumstances since the record was made; (4) The cause can be remanded to the court below for further consideration, thus insuring a decision on the merits, since the vacancy on that count which led to the equal division has now been filled.

The Proceeding in the Court Below Was an Original Proceeding and Not Appellate.

The judicial review provided by the Act encompasses questions of "constitutional power, statutory authority and the basic prerequisites of proof".[1] In-

[1] *Rochester Telephone Corp. v. U. S.*, 307 U.S. 125, 140.

deed if the statute failed to provide a method for judicial review on such questions, they would be open to examination under the general equity powers of the district courts,[1] since an administrative body cannot constitutionally be invested with final authority to determine these strictly judicial questions. Where, as in the case of this Act, the review is by a proceeding in the Circuit Court of Appeals, such proceeding is original and not appellate. It is not part of the general jurisdiction of the courts of appeals.[2]

The proceeding in the court below under Section 24(a) of the Act was, therefore, an original judicial proceeding, being the first judicial hearing of the case. See *Commission v. Havemeyer,* 296 U.S. 506, 511, 519; *Chamber of Commerce v. Federal Trade Commission* (C.C.A. 8th), 13 F.2d 673, 674.

In *Natural Gas Pipeline Co. v. Federal Power Commission* (C.C.A. 7th), 128 F.2d 481, 484, the Court said:

> "We think it well settled that in respect to review of orders of Federal Boards and Commissions, the jurisdiction of the Circuit Court of Appeals when granted by Congress, is original rather than appellate in character and that, being endowed with original jurisdiction, the court may by its own orders protect the rights of the parties in any manner in which any trial court

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[1] *Stark v. Wickard,* 321 U.S. 288, 306; *Steele v. Louisville & N. R.R. Co.,* ..... U.S. ....., 89 L.Ed. (Adv. Ops.) 172, 180.

[2] *American Federation of Labor v. N.L.R.B.,* 308 U.S. 401, 404.

of equity of general jurisdiction might do so in an injunction suit."

Section 24(a) imposes a positive duty on the courts; they "have exclusive jurisdiction to affirm, modify or set aside such order in whole or in part". The power of the Commission is lost during the pendency of the proceeding and the court is bound to decide the controversy.

In an original proceeding before a court made up of more than one judge, concurrence in a decision by a majority of the court is essential to any action. If such concurrence cannot be obtained, the matter must remain *in statu quo*. For a court of first instance, equally divided on the merits, to attempt to dispose of the matter one way or the other amounts to a decision of the case by less than a majority of the court. 21 C.J.S. 296; *In re First Congressional District Election*, 295 Pa. 1; *Deglow v. Kruse*, 57 Ohio St. 434; *In re Kings Co. E. R. Co.*, 78 N.Y. 383, 385.

Apart from the constitutional duty of the courts to determine whether an administrative body has acted pursuant to law, specific provision in the statute for judicial review has additional significance. *United States v. Carolina Carriers Corp.*, 315 U.S. 475, 489.

We submit that the performance of the judicial function in such matters requires a judicial determination of the question whether the administrative agency has acted within its powers, and whether a fair hearing has been accorded. This duty, we submit, was not performed by the Circuit Court of Ap-

peals and this Court declaring that their members are equally divided over the question whether the action of the administrative body was proper, and that they are therefore unable to determine the issues presented.

This point was urged in our petition for certiorari and in our brief herein. It was not stressed at the oral argument because it seemed that the point would be academic if this Court should enter an order approving or setting aside the order of the Commission on the merits. In view of the disposition of the case by this Court the point is no longer academic but is a live issue.. We again urge the point on the attention of the Court in order that it may be more fully presented on rehearing.

Reargument May Well Result in a Decision on the Merits.

The questions presented on this review are important not only to the parties directly involved, but also to the public generally; and for that reason it is submitted that they should be decided if that is at all possible. Even though situations may arise in which the courts simply cannot act because of an equal division, such a result is undesirable, and means should be found, if possible, for a judicial determination of the questions presented.

Only three months, with intervening Christmas holidays, elapsed between the submission and the order.[1]

---

[1]This case was under submission in the Circuit Court of Appeals from December 18, 1942, to February 23, 1944, before it concluded that it was unable to agree upon a decision. Two of the judges concurred in an opinion which expressed their views on the questions involved.

A reargument directed to the points upon which the Justices differ, followed by further consideration, might well result in agreement on a decision on the merits—at least it would seem but just that this opportunity should be afforded the parties. The probability of agreement on disposition of the case is apparent from the action of the Court on reargument of eight cases as to which the Court was equally divided (313 U.S. 596, 597). At the next term all of these cases were disposed of on the merits.

Rendition of Opinions Will Forestall Future Confusion and Injustice Even Though the Court Remains Equally Divided.

If, after reargument, the Justices are still unable to reach an agreement, it would serve the cause of orderly administration of the Act, and the determination of the rights of the parties affected by it, if the views of the Justices were expressed in opinions. The area of agreement might well cover some or all of the issues involved on the hearing of a new application to the Commission for a declaration that under the facts now existing, Petitioner is not a subsidiary.

Speaking now generally, the value of the opinions of members of this Court to the parties and to others as well, is by no means dependent upon concurrence of a majority. Dissenting opinions are, of course, frequently invaluable. The fact that no more than three judges concurred fully in any one of the five opinions delivered in *Downes v. Bidwell,* 182 U.S. 244, did not prevent that case from being a landmark in the development of constitutional principles, and the im-

portance of the case was little affected by the circumstance that five Justices were able to agree only on a result.

We submit, therefore, that particularly in cases like this, where the basic problem should in any event be considered further by the Commission, the Court should set forth the views of its members on the questions presented.

Silent Affirmance Has Unjust and, We Submit, Unintended Consequences.

As shown, the substance of the Court's decision is to dismiss Petitioner's application for judicial review. But being in form an affirmance, it operates under established principles to give the Court's unqualified approval to every aspect of the Commission's decision.

The judgment of this Court is *res judicata,* whether or not the Commission's order would have been *res judicata* if no review had been sought, and notwithstanding that the judgment is a silent affirmance by an equally divided court. *Durant v. Essex,* 7 Wall. 107, 110; *United States v. Pink,* 315 U.S. 203, 216; *Scott, Collateral Estoppel by Judgment,* 56 Harv. L. Rev. 1, 10.

In the absence of any intimation of the Court's views, the parties and others are left to surmise that none of the criticisms of the Commission's opinion and methods, forcefully stated in the dissenting opinions below, is agreed to by a majority of this Court. On every major point, moreover, the views announced by the Commission, considered *seriatim,* must be taken

as approved by at least four members of the Court, and possibly by a clear majority.

The argument in this case demonstrated that the Commission believed that the mere existence of a 10% stock holding authorized it, without more, to deny a declaration, and thus subject a local company to Federal regulation.

The result will be that local companies, which Congress never intended to subject to Federal regulation, will be held subject to Commission power, and Federal power will be exerted within what would otherwise be the domain of state power, without any showing of justification therefor.

Moreover, the Commission will undoubtedly interpret this Court's action as approving its view that the Act dispenses with the requirement, heretofore insisted upon by this Court, that where a determination of status by an administrative body imposes burdensome obligations, or subjects otherwise local matters to Federal control, the administrative body must determine plainly and explicitly that the facts which the statute makes prerequisite to the determination are present, particularly where, as here, the courts are without power to find the facts independently. *United States v. Carolina Carriers Corp.,* 315 U.S. 475, 489; *Yonkers v. United States,* 320 U.S. 685, 691.

No other statute, so far as we know, has attempted, or been construed as attempting, thus to dispense with any determination that the factual basis prerequisite to an exercise of power is present. There can be no

honest doubt that, as the Congressional debates show without any equivocation, every assurance was given that the intent of the Act was to regulate local public utilities dominated by interstate holding companies, and effectively to exclude from such regulation all local public utilities not so dominated. (Our Brief, pp. 25-34, 40-45.) But the Commission repudiates the idea that it must make any finding or have any opinion on that question one way or the other either as a preliminary fact or as an ultimate conclusion and expressly refused to make any such finding here (R. 1930-1931).

The power of the courts, heretofore undoubted, to insist upon administrative procedure that will enable them to determine whether legislative commands have been obeyed or disregarded, is thus emasculated, and provisions purporting to guard against the exercise of arbitrary power through judicial review of administrative action are made meaningless.

Reconsideration by the Commission May Well Solve the Present Difficulty and Is Appropriate Under the Facts Presented.

Remand of the case to the Commission may well end the difficulty created by inability of the courts to decide on the merits. On the other hand, silent affirmance will, as shown, confuse future consideration of Petitioner's status. Changes that have taken place during the four years since the evidence was closed in January 1941, are such that, quite apart from the Court's present inability to deal with the case on the merits, the case should not be decided on the merits until after the Commission has reconsidered the question in the light of the facts now existing. Reconsider-

ation, therefore, will not only avoid the difficulties raised by the equal division in the Court, but is called for on other grounds as well.

Petitioner filed its application in November, 1935, but it was not until five years later, September, 1940, that the Commission set the application for hearing, although in the interim it heard and disposed of more than a score of similar applications under Section 2(a)(8). The hearing was concluded January 15, 1941. The Commission denied the application on September 10, 1941. The court below affirmed the Commission's order by an even division on February 23, 1944. Certiorari was granted on May 22, 1944, and this Court affirmed by an even division on March 12, 1945.

Many changes have taken place since the record was closed on January 15, 1941, more than four years ago. As disclosed to this Court by the Commission, the following have occurred:

> "Since the Commission's opinion in this case, the Commission has in other proceedings ordered North American to dispose of its holdings of petitioner's stock, and North American has already entered upon a program of disposition which will probably result in bringing its holdings below the statutory 10% within approximately the next year. See note 3, *supra*. Thus, the decision of this case, if favorable to the Commission, will subject the petitioner to the responsibilities and restrictions of a subsidiary for only a relatively short period. However, the validity of the Commission's order is of course to be considered in the light of conditions as they existed when the order was made, at which time there was no basis for fore-

> casting how long petitioner was likely to remain in the status of a subsidiary." (Commission's Brief, p. 26)

At another point the Commission points out that

> "Since the date of the Commission's order, North American has distributed some of petitioner's common stock as dividends. As of October 2, 1944, its holdings had been reduced to 24.99% of the common stock, comprising 13.02% of petitioner's voting securities. North American has committed itself to a program of systematic disposition of its P. G. & E. stock under which it will reduce its holdings below 10% by January, 1946, if dispositions are continued at the present rate. It is also under order to dispose of that stock and it has urged no error in that determination except the general constitutional objection raised in the proceeding now pending on the special calendar of this Court, *North American Co. v. Securities and Exchange Commission,* No. 1, present Term." (Commission's Brief, p. 5)

The records of this Court show that subsequent to the Commission's order in this case, the Commission directed North American to divest itself of its interest in Petitioner (Holding Company Act Release No. 3405)—that order being now before this Court on certiorari in *North American Co. v. Securities and Exchange Commission,* 318 U.S. 750. The case is being held on a special docket because of the absence of a quorum, 320 U.S. 708.

Regardless of the differing views of the members of the Court as to the propriety of the Commission's

original order, the interests of justice demand that the Commission be directed to reconsider the question of whether Petitioner is subject to the controlling influence of North American in the light of the changed circumstances now existing.

The Court Has Adequate Power to Dispose of the Case as Justice May Require.

The Court has repeatedly announced the principle recently stated in *Ashcraft v. Tennessee,* 322 U.S. 143, as follows:

> "In disposing of cases before us it is our responsibility to make such disposition as justice may require. 'And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.' "

In *Ford Motor Co. v. National Labor Rel. Bd.,* 305 U.S. 364, 373, involving provisions for judicial review similar to those in the Act, the Court said:

> "It is familiar practice to remand causes for further proceedings without deciding the merits. . . .
>
> "The jurisdiction to review the orders of the Labor Relations Board is vested in a court with equity powers, and . . . it may adjust its relief to the exigencies of the case in accordance with the equitable principles governing judicial action. . . . the court may remand the cause to the Commission for further proceedings to the end that valid and essential findings may be made. . . . Whatever findings or order may subsequently be

made will be subject to challenge if not adequately supported or the Board has failed to act in accordance with the statutory requirements."

This Court goes to great lengths to insure that unjust or improper results shall not arise out of the mechanics of procedure. *Phillips v. United States,* 312 U.S. 246; *Query v. United States,* 316 U.S. 486.

Means Are Readily Available for Obtaining a Decision on the Merits.

A judicial decision of this case on the merits would clearly be in the interests of justice. We therefore point out that even though the Court should be inclined to the view that on rehearing its even division might continue, a decision of the case on the merits can be obtained by any one of several alternative courses after a rehearing is granted.

1. This Court could remand the cause to the Commission (or direct the court below to do so) with direction to take evidence of the changed circumstances which have occurred since the record in the proceeding was made in January 1941, more than four years ago, to make findings based thereon, and to determine on that basis whether Petitioner is now dominated by North American in a manner calling for regulation under the Act.
2. This Court could remand the case to the Circuit Court of Appeals with directions to further consider the cause and render its decision. The vacancy which existed at the date of the earlier hearing and consideration, and which made an even division of the court possible, has now been filled, and the seven judges should be able to arrive at a decision.

Conclusion

The disposition of this case by two equally divided courts is, so far as we can determine, unique in American jurisprudence. It cannot fail to be cited as a precedent for the proposition that judicial determination of questions of constitutional power, statutory authority and the basic prerequisites of proof can be left to the sole determination of an administrative body and that no court need necessarily determine such questions. If such be the law, provisions for judicial review of administrative orders are an idle formality. We cannot believe that this Court intends that the judicial functions created by the Constitution and by statute should be completely abdicated.

We respectfully pray that a rehearing should be granted, and that pending the consideration of this petition, the issuance of the mandate be stayed.

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San Francisco,
March 24, 1945.

CERTIFICATE OF COUNSEL Moore

WE HEREBY CERTIFY that the foregoing Petition for Rehearing is presented in good faith and not for delay.

HERMAN PHLEGER,
WM. B. BOSLEY,
ROBERT H. GERDES.

Dated: San Francisco, March 24, 1945.

No. 55. PACIFIC GAS & ELECTRIC CO. *v.* SECURITIES & EXCHANGE COMMISSION. Certiorari, 322 U. S. 720, to the Circuit Court of Appeals for the Ninth Circuit. Argued December 4, 1944. Decided March 12, 1945. *Per Curiam:* The judgment is affirmed by an equally divided Court. MR. JUSTICE DOUGLAS took no part in

the consideration or decision of this case. *Mr. Herman Phleger,* with whom *Messrs. Wm. B. Bosley, Robert H. Gerdes* and *James S. Moore, Jr.* were on the brief, for petitioner. *Mr. Chester T. Lane,* with whom *Solicitor General Fahy, Messrs. Roger S. Foster, Milton V. Freeman, David K. Kadane* and *Arnold R. Ginsburg* were on the brief, for respondent. Reported below: 139 F. 2d 298.